109-205

UNITED STATES SUPREME COURT.

No. 810.

THE STATE OF LOUISIANA EX REL. FOLSOM BROTHERS, A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

VERSUS

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

Brief for Plaintiffs in Error.

HENRY B. KELLY,
ROBERT MOTT,
Of Counsel.

Jan. 7, 1881.

E. F. Hansell, Stationer and Printer, 30 Camp Street, New Orleans.

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In the opinion of the court of the first instance in this case, it is said (Trans. p. 28): "The evidence shows that relators filed a suit in the Superior District Court, May 15th, 1873, claiming that on the 6th of that month a mob or riotous assemblage had broken into their store in the city of New Orleans,

and had destroyed property to the value of $26,858, and that the city of New Orleans was liable therefor, and praying judgment accordingly. The case was tried before a jury and verdict rendered for $15,000, which was made the judgment of the court. The plaintiffs appealed, and in December, 1876, the Supreme Court gave judgment (reversing the verdict and judgment appealed from) for the full amount claimed. (See 28 An. 937.)

It further appears that on the 24th of March, 1873, Guilfoux and Lee instituted suit in the same court on a similar cause of action, * * * and that a verdict and judgment was rendered in their favor for $2000. * * * * *

Relators were duly subrogated to the rights of the plaintiffs under this judgment. * * It also appears that these judgments were properly registered upon January 15th, 1876, and July 15th, 1877.

The Court then goes on to set forth the provisions of act No 5 of 1870, extra session, requiring such registration to be made, and requiring provision to be made in the annual budget of city expenditures for the satisfaction of such registered judgments in the order of their registry. The court shows that in 1873, when the liability of the city, upon which the judgments of Folsom & Bros., and Guilfoux and Lee were recovered, attached, there was

no limitation on the taxing power of the city, other than that it should not exceed, for all purposes, one dollar and seventy-five cents upon the $100; and that Act No. 5 of 1870 left no remedy whatever for the enforcement of judgments against the city, except by the exercise of the taxing power. The opinion of the court, also, shows that if certain limitations to the taxing power set up and relied upon by the city, which had been imposed subsequent to the attaching of its liability in 1873, were allowed to be entitled to effect against the judgments of Folsom and Bro., then they were left entirely without remedy, and the value of their judgment completely destroyed.

In this connection the Court said: "The evidence further shows that including the judgment registered in favor of relators upon the 15th of July, 1877, there are still unpaid judgments registered up to that date, which amount in the aggregate, with interest and cost estimated, to the round sum of $290,000. The amount registered since the 15th of July, 1877, is not shown. The estimated receipts for 1879, as shown by the budget offered in evidence (from all sources) amount to $1,959,630. The estimated expenditures, as shown by the testimony of the Administrator of Accounts, * * * exactly covers the estimated receipts.

In the last-mentioned budget there is an item

of $10,000 for judgments, and another item of $2190 for "contingent."

It requires no profound mathematician to demonstrate that, with judgments registered and unpaid up to the 15th of July, 1877, amounting to $290,000, aside from those which have been registered since that date, an annual appropriation of $10,000 will make very little impression upon the judgment debt of the city.

Taking the principal of this debt at $242,929 37, as stated by the respondents, and omitting the $48-000 estimated interest and costs, it is evident that $10,000 *per annum* will fall something like $2100 short of paying interest on said debt at the legal rate of five per centum, *so that instead of decreasing the judgment debt will increase year by year, and the judgment in favor of relators being the last registered of the series which make up the amount referred to, can not only never be paid, but, as if to carry him beyond eternity, its prospect of payment becomes more remote with each succeeding year.* It becomes the duty of the Court to inquire whether the views of the learned counsel for defendants, which lead to conclusions so deplorable to relators, are well founded."

His Honor, the District Judge, in an elaborate and able opinion, came to the conclusion that relators were entitled to the relief sought by them, and

granted it. On appeal to the Supreme Court the judgment of the district court was reversed, and the relief sought refused, upon the *sole ground* that the liability of the city to Folsom & Brother, and Guilfoux and Lee, upon which the judgments were reversed, was *ex delicto*, and not *ex contractu*, and was, therefore, not under the protection of the obligation clause of the Constitution of the United States; and that subsequent legislation, statutory and constitutional, taking away all remedy for the enforcement of the judgments and utterly destroying their value, was valid and binding upon the courts.

The case for the plaintiffs in error has been fully and ably presented in the brief of our learned colleague, Mr. Semmes; we propose to confine ourselves solely to the consideration of the question, whether the assumption of the Supreme Court that the liability of the city was *ex delicto* is tenable or not.

The liability of the city is under section 2453 of the revised Statutes of Louisiana of 1870, which is in the following words: "The different municipal corporations in this State shall be liable for the damages done to property by mobs or riotous assemblages in their respective limits."

In their opinion, Trans. p. 87, the Supreme Court say: "We are unable, however, to perceive any distinction between the obligations arising un-

der section 2453 of the revised Statutes and those arising under articles of the Civil Code relative to offenses and quasi-offenses. It merely expressly extends to municipal corporations that responsibility for damages *occasioned by their fault or negligence, or the fault or negligence of their servants or overseers* which rests upon natural persons under articles 2315, 2316, and 2320 of the Civil Code.

It has been a subject of frequent judicial discussion, and of contradictory decisions, whether or not such responsibility would not attach, even in the absence of such special statute, on the ground that powers are granted to municipal corporations especially designed to enable them to preserve peace and order, and that it is their duty so to exercise such powers as to afford adequate protection to property against mobs and riots. It can not be doubted that these principles are the underlying reasons of the statute."

The articles of the Civil Code referred to in the above opinion of the Court are.

2315. "Every act whatever of man that causes damage to another obliges him by whose fault it happens to repair it." * * * *

2316. "Every person is responsible for the damage he occasions, not merely by his act, but by his negligence, his imprudence, or his want of skill."

2320. "Masters and employers are answerable for the damage occasioned by their servants and overseers in the exercise of their functions in which they are employed."

"Teachers and artisans are answerable for the damage caused by their scholars or apprentices while under their superintendence."

"In the above case responsibility attaches when the master or employer, teachers or artisans, might have prevented the act which caused the damage and have not done it."

If, as is assumed by the Supreme Court of Louisiana, the underlying reason for the statute making municipal corporations liable for damage done by mobs or riotous assemblages is that "powers are granted them especially designed to enable them to preserve peace and order, and that it is their duty so to exercise such powers as to afford adequate protection to property against mobs and riots," then it would seem that when all such powers are taken away from a municipal corporation its liability under the statue should, in accordance with the maxim *cessante ratione cessat et ipsa lex*, cease to exist.

Now, it is a fact, of which the Supreme Court of Louisiana was, of course, aware, that at the time of the mobs and riotous assemblages in 1873, which destroyed the property of Folsom & Brothers, and

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Now, it is a fact, of which the Supreme Court of Louisiana was, of course, aware, that at the time of the mobs and riotous assemblages in 1873, which destroyed the property of Folsom & Brothers, and

of Guilfoux, and Lee, *all control over the police, and all means of preventing or suppressing mobs and riotous assemblages had been taken away* from the Mayor and Administrators of the city of New Orleans and vested in another body, over whom they had no control whatever.

By section 2236 of the Revised Statutes of 1870, the parishes of Orleans, Jefferson, and St Bernard were territorially united for the purposes of police government and police discipline therein into one district, to be known and called "The Metropolitan Police District of New Orleans, State of Louisiana."

By section 2237 the powers and duties connected with and incident to the police Government and discipline of said district were vested in, and to be exercised by a board of five commissioners, to be styled the "Board of Metropolitan Police," and by a Metropolitan Police force composed of a superintendent, surgeons, captains, sergeants, corporals, patrolmen, clerks, and doormen.

By section 2238 the Commissioners of Metropolitan Police were to be appointed by the Governor, by and with the advice and consent of the Senate.

By section 2242 the Commissioners were to appoint the superintendent and all subordinate officers and men of the force, who were to hold office during good behavior.

By 2247 the Board of Metropolitan Police were authorized upon the apprehension of riot, tumult, or mobs, to appoint as many special policemen (without pay) from among the citizens as they may deem proper.

Sec. 2290. "That the Mayor of New Orleans be and he is hereby prohibited from making any police appointments, *or exercising any police duty, authority, or control within the limits of the city of New Orleans.*"

Sec. 2291. "In any case where the assistance of the police shall be necessary for the execution of the powers entrusted to said Mayor, he shall make application for said assistance to the Board of Metropolitan Police, *who shall in their discretion and judgment, allow or refuse* the co operation of said Police Force."

We respectfully submit that with such legislation as the foregoing on the statute book, and in force at the time the damage was done by mob violence, it is not logical or reasonable to say that the statutory liability cast upon the Mayor, Administrators, and tax-payers of New Orleans, to indemnify losers by mob violence, is a liability, *ex delicto*, on their part for negligence, or as tort-feasors. We respectfully submit that to an action to enforce the liability cast upon the city by section 2453, of the Revised Statutes, it would be *no defense*

to aver and prove that all possible diligence had been used and every possible effort made by the defendant officers, to prevent the happening of the loss.

If they were proceeded against as parties guilty of offences, or quasi-offences, or as tort-feasors, or, for negligence, they could say "not guilty," and unless they were *proven* guilty, no liability whatever would attach to them.

The fact is that the statutory liability cast upon them is not made dependent upon any fault or negligence on their part, but the law distinctly implies and raises a contract of indemnity between all the municipal corporations of the State and all persons who may suffer loss or damage from mobs or riotous assemblages within their limits. It may be said to be a contract, in the nature of an addition to the general social compact, of mutual insurance or indemnity against loss from the causes stated, to which the municipalities and all within their limits, are made parties by the statute, and of which any one is entitled to take advantage should the loss fall upon him. This liability to contribute to make good the loss is essentially different from that of tort-feasors themselves, who are *each* liable for the *whole* loss occasioned by their act.

If one intrusts goods to a railway company for

transportation, and, while the goods are in charge of their agents, the depot where they are is destroyed, with the goods, by an incendiary fire, the incendiary and the railway company are both responsible for the loss of the goods, the former *ex delicto*, and the latter upon a contract implied by law from considerations of public policy, whereby a common carrier is held liable to indemnify those employing him against all losses by fire, except when occasioned by lightning. (Redfield on Railways, p. 6.)

The statutory obligation imposed on the city of New Orleans, as upon all other municipal corporations within the State, to indemnify sufferers from losses by mob violence, is by no means an obligations arising *ex delicto*. It is an utter confusion of ideas to class it with the liability of the members of the mob or rioters, who are liable *in solido* and *ex delicto*, for any damage done by them. Whereas in order to hold the city liable, it is not necessary to aver or prove any fault, or offense, or negligence on the part of the municipal corporation or its officers, or agents; nor can the city escape the liability by averring and proving that the municipal corporation and its officers were without fault, or offense, and guilty of no negligence or want of diligence.

In Williams vs. The City of New Orleans, 23

An. 507, the plaintiff sought to render the city liable for the amount of loss alleged to have been sustained by him from the destruction and carrying off of property by a mob. The claim was predicated on the statute of 1855, re-enacted in 1869, which declares that "the different municipal corporations shall be liable for the damages done to property by mobs or riotous assemblages in their respective limits." This provision was embodied in the Revised Statutes of 1870 as section 2453.

"The principal ground of defense," said the Court, "seems to be that by the statute of the 14th of September, 1869, entitled 'an act to establish a metropolitan police district, and to provide for the government thereof,' the city of New Orleans was divested of the power and means to maintain order, and suppress riots, mobs, and insurrections. This defense seems more specious than solid. The liability of municipal corporations for losses occasioned by riotous conduct within their limits, is not made to depend upon having police forces. The underlying principle upon which laws of the character of the statute of 1855, re-enacted in 1869, already referred to, are founded, is that it is the interest of every one that property should be protected, and that it is for the general good that such laws should exist. When the importance of social order, and the security of person and property

resulting from it, are impressed upon the public mind by the strong influence of pecuniary responsibility, a sharper vigilance is excited, and a more efficient action aroused in regard to the prevention and suppression of riotous assemblages, by which in large cities, especially, property is so often damaged and destroyed. This usage, it appears, is of ancient origin. It prevailed among the Franks and the ancient Germans, and was adopted at a later day in other countries from nations of German descent. In England, in the districts called hundreds, from formerly having contained each one hundred families, it was introduced at a remote period.

In many cases where an offense is committed within the hundred the inhabitants are civilly responsible to the party injured. In other States of the Union, laws have been passed making cities or counties responsible for the destruction of property by mobs. Such a law is in force in the State of New York, and we are referred to numerous decisions in suits instituted under its provisions. Looking to the reason for the establishment of such laws, and turning to our statute on the subject, we find its terms clear, positive and unambiguous. It declares that "the different municipal corporations of this State shall be liable for damages done to property by mobs or riotous assemblages in their respective limits." The language is plain.

There are no words of limitation or qualification. We conclude. therefore, that the establishment of the Metropolitan Police Force does not release the corporation of New Orleans from the provisions of this law"

Who are the real parties made liable to idemnify against loss by mob violence by this statute? All of the tax-payers of the city, including non-residents, infants, and widows, and the great body of law abiding people of the community. To say that *their* liability under this statute is *ex delicto*, is absurd.

The liability is really, by contract or agreement, implied by the statute, between the city of New Orleans and its tax-paying inhabitants and any one suffering loss by mob violence within the limits of the city, to indemnify him for the loss, and this altogether without regard to the consideration whether the city authorities and the body of the tax-paying inhabitants may or may not have been guilty of any fault, neglect, or connivance with reference to the circumstances occasioning the loss.

It would be taking a very narrow view of the obligation clause of the Constitution to confine its scope and operation to the impairment of express contracts, *inter partes*. As was said by Chief Justice Marshall, in Ogden vs. Saunders, 12 Wheat.

341, "a great mass of human transactions depend upon *implied* contracts, which are not written, but grow out of the acts of the parties."

In the Roman law implied contracts are entitled: "*Obligationes quasi ex contractu.*"

Story on Contracts, § 11. n. 1.

All contracts, whether executed or executory, express or implied, are within the provisions of the obligation clause of the Constitution.

6 Cranch, 135; 7 Id. 164.

In the Civil Code of Louisiana, under the head of Quasi Contracts, it is said, art. 2292: "Some obligations are implied by the sole authority of the laws."

In like manner, as for reasons of public policy under the common law, the law implies a contract between every one entrusting goods for transportation to a common carrier and the carrier, that the carrier shall insure the goods against all loss by fire, except by lightning, and this without regard to any degree of diligence and watchfulness the carrier may have employed to prevent the loss. So, under the statute of Louisiana, there arises an implied contract of indemnity between every municipal corporation in the State and any one within their respective limits who suffers loss or damage from mob violence, and this altogether without regard to any degree of

vigilance that may have been used by the municipal authorities to prevent the loss.

The liability is not made to depend, in either case, on the fault or negligence of the party to be charged, and is, therefore, clearly, in neither case, a liability *ex delicto*, but is a liability arising *quasi ex contractu*, from a contract implied between the parties by law, from considerations of public policy, and the obligation is therefore under the safeguard of the Constitution of the United States.

HENRY B. KELLY,
ROBERT MOTT,
Of Counsel.

Jan. 7, 1881.

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THE CITY OF NEW ORLEANS.

ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief for Defendant in Error, the City of New Orleans.

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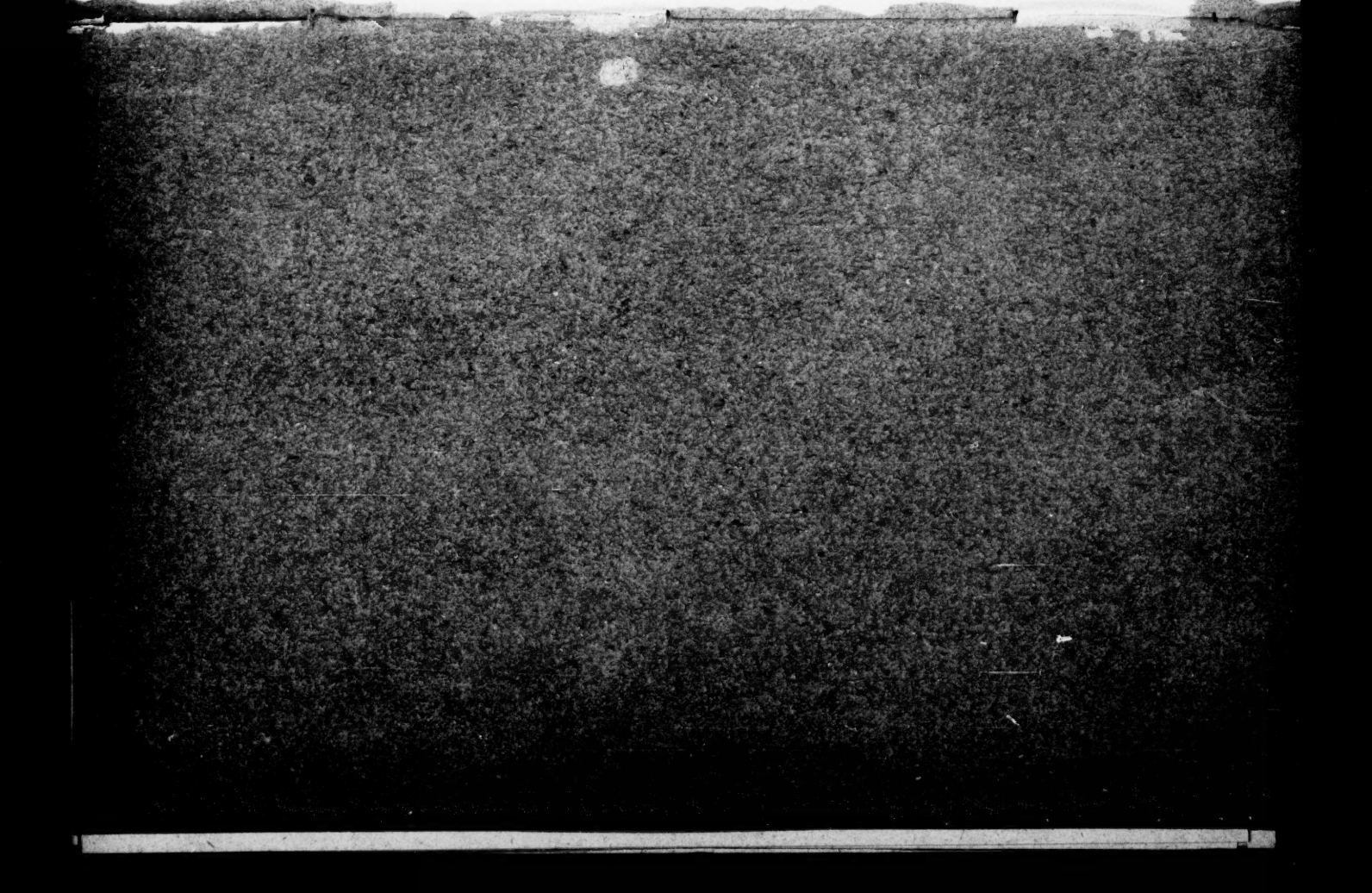

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STATEMENT OF FACTS.

The relators, Folsom Brothers, recovered judgment against the city of New Orleans, for twenty-six thousand eight hundred and fifty dollars. They became the assignees of another judgment against the city of New Orleans, for ten thousand dollars. The judgments were recovered for damages, claimed to have been sustained by a mob in May, 1873, the statute of the State enacting, that municipal corporations shall be liable for damages done by mobs or riotous assemblages. Record, pp. 11, 48. Revised Statutes of Louisiana, § 2433.

When these judgments were recovered, the law of the State, to which reference will be made further along, prescribed that satisfaction was to be obtained by registering the judgments in the office of the Comptroller of the city, and by pursuing the mode, prescribed by the statute.

The relator availed of the statutory remedy, to which under the law, they were confined. Their judgment for $26,850, was registered on the 15th July, 1877, that of $2,000 the 15th January, 1876, Record, p. 13.

In 1870, a city charter was adopted. Among other provisions, it was required, that the City Council should annually make a budget of liabilities and expenses for the ensuing year, including the requisite amount for contingent expenses, and the city was empowered to levy a tax to meet the estimate of liabilities and expenditures exhibited by the budget, but the rate of taxation so to be levied was limited to one dollar and seventy-five cents of every hundred dollars of valuation. (Acts 1870, p. 39, S. 19, approved March 16th, 1870 (printed in appendix).

At the same session, but earlier in point of time, there was enacted, the statute under which the relators recorded their judgments for payment, to which allusion has already been made—being Act No. 5 of 1870, session Acts, p. 10 (printed in appendix). That Act prohibited the issue of executions against the city, required all judgments against the corporation to be registered, and their payment was directed out of the money appropriated, in the budget, if sufficient; in case of insufficiency, their payment was to be made out of the contingent fund, if deemed proper; or that not done, the judgments were to be satisfied in the order of the registry, out of the money, next annually set apart on the budget for the purpose. This Act and also the city charter, passed at the same session, form legislation on the same subject, to be construed together. Act No. 5 was the earlier enactment, approved 16th March, the city charter followed it, having been approved March 17th, 1876.

The city charter provided for all the floating debt of the city (including judgments), up to the date of the charter (Acts 1870, Sess. Acts, p. 47, sec. 46), by the issue of three millions of bonds. The Act No. 5, dealt with future judgments, by directing provision for them in the annual budgets, and payment from the appropriation if sufficient, otherwise payment in order, out of the first money next annually, provided in the budget. But as that provision, had to be made from taxation, limited for all purposes, judgments included, to one dollar and seventy-five cents on every one hundred dollars of valuation, the amount on the budget, had necessarily to be restricted, because the amount of the public taxes necessary to carry on the govern-

ment, not susceptible of seizure or diversion (1st Dillon on Municipal Corporations, p. 184), had to be provided, out of that limited taxation, that is, the budget had to exhibit all items of necessary expenditure of the current year, to be paid from the revenues of that year (Act 1870, S. 19 appendix.) It was foreseen, that the appropriations for judgments in any year, might prove insufficient, but in that event the law did not permit increased taxation (as claimed by relator here), or the displacement of other items in the budget, but the direction of the act, was that the judgment creditors was to receive payment in order, and out of the first money next annually appropriated on the budget. No judgment creditor could under the terms of the Act, claim that his judgment should be paid absolutely, for that payment depended on the conditions announced in the act. Nor could any judgment creditor insist upon an appropriation on the budget for any fixed amount, for the provision was controlled by the limit of taxation and the amount of necessary expenditure, to sustain the government. The amount for judgments to be appropriated annually, thus was to be fixed by the discretion of the Council, in framing the budget: the discretion was to be guided by the limit of taxation for all purposes: and the amount required for police, lights, paving streets, public schools and other necessary expenses, of maintaining the corporate existence and discharging of its functions. The competency of this legislation, thus to limit the provision for judgment creditors, not contract creditors, whose rights arise from contracts, protected from impairment, needs no discussion, at least, here, but the legislation of Louisiana, on the subject, finds its place in the statement of facts, with which the Court has to deal.

In 1876, the Legislature of Louisiana, passed another Act, which provided for the funding of all the bonds of the city, into the new premium bonds, authorized by the Act, and by one of the provisions of that Act, the rate of taxation, for all corporate purposes was still further reduced and limited at one and a half percentum, or one dollar upon every one hundred dollars of valuation. See Acts of 1876, No. 31, p. 54, (printed in appendix).

Then came the constitution of Louisiana of 1879, which declared, that no parish or municipal tax, for any purposes whatsoever, shall exceed ten mills on the dollar of valuation. Constitution of Louisiana, art. 209, appendix.

The budget is made, and the taxes to meet it; are levied in December of each year; the budgets of expenses and of taxes are both for the ensuing year. (Acts of 1870, S. 18, 19, Sess. Acts, pp. 38, 39, appendix), which superseded the provisions in the Act of 1856, on the same subject, cited in the relators' brief. On the budgets for the years previous to 1879, the appropriations for judgments, made thereon out of the taxes of those years, were exhausted (i, e. overdrawn) at the date of the relators' application. Record, p. 8. At that date, the registered judgments against the city was two hundred and ninety thousand nine hundred and twenty-nine dollars, the relators judgments included, their largest judgment for $26,858, being last on the list. The payment in order, secured by the statutes, was not promising, hence this application of the relators, to have additional taxes imposed to pay all these judgments, and to have the large amount of the judgments placed on the budget of the year 1879, and of subsequent years. Record, p. 23.

When the relators application was made, the entire budgeted revenues of the city for 1879, was ($1,959,630) one million nine hundred and fifty nine thousand six hundred and thirty dollars, the taxes being levied up to the extent of the limit allowed by the law and the Constitution. The contract or bond creditors of the city were entitled to have levied one-half of one per cent. (Act of 1876, session Acts pp. 55, 56, 57, Sec. 6 of appendix). This tax was deemed unaffected by the constitutional limitation. State, ex rel. Lucas E. Moore vs. New Orleans, 32d Louisiana Annual, p. 726. The budgeted tax of 1879, was one and a half, all that the Constitution, and the Act of 1876 allowed to be levied. Turning to the budget of expenses, (Rec. p. 18), it will be seen that every dollar of this maximum taxation, permitted under the Constitution and laws, is absolutely requisite to meet the items of expenditures in that budget. The provision

on the budget of expenses. for judgments is ten thousand dollars, (the Administrator of Accounts, testifying, in reference to this item, Rec. p. 9, is: "We wanted to provide to the extent of our power for judgments, and carry on the administration of the Government.") Every item of expenditure in that budget, is absolutely essential to the maintenance of the Government. The budget of expenses for 1879, thus it is perceived, with its provision for judgment $10,000, absorbed every dollar of all the revenues of the year. The character of the items of expenditure and their direct relation to the very existence of the corporation, and to the discharge of its duties, is apparent on inspection. The items are for police, lights, salaries of officers, paving and repairing streets, etc. Test. pp. 8, 9. If the relators could force their judgments on the budget, there would have to be displaced items for police, schools, lights and other items essential to civilized government. If the total amount of judgments, $290,000, was placed on the budget, as relators demand, one-sixth of the entire revenues for purposes of corporate life, would be taken away. So, the appropriations on the budgets of previous years being exhausted, there being on the budget of 1879 but ten thousand dollars set apart for judgments, and there being recorded judgments against the city for upwards of $290,000, the registry of relators being the last on the list, they instituted the present suit for a mandamus to compel the city to place their judgments on the budget of 1879, to compel payment out of the taxes of that year and out of the taxes of subsequent years, until full payment was made. The relator had applied previously for a mandamus to compel the payment out of the taxes of 1878. Record, pp. 34, 41, 46. In their previous petition they had in substance averred that out of the taxes of that year, enough had been collected to extinguish the judgments recorded, ahead of those of the relators; that the money collected had been diverted; that the prior judgments had lost their priority, by submitting to the alleged diversion of the funds, and on these and other allegations, the relators asserted their right to have their judgments budgeted, for payment out of the

taxes of 1878. But these previous applications by the relators, were abandoned and not pressed. The present application, on the 16th of December, 1878, was just before the time for preparing the budget and levying taxes for the ensuing year, 1879, and as already stated, asserted a right of payment out of the taxes of 1879.

The answer of the city (Record, p. 5), to the petition for the mandamus, sets up, that there is no money in the treasury to pay the judgments of relator: that taxation is limited by law to one and one-half per centum; that the assessed valuation of all property in the city does not exceed $111,000,000; that all the revenues that will accrue to the city for the year 1879, will be required to support the necessary expenses of maintaining the city government, but that should any surplus remain, the city administration propose to apply it to the satisfaction of the judgments. The budget actually adopted, sets apart $10,000 to this purpose. It will be borne in mind, that the budget made in advance of the collection of the taxes, the provision in it, is of course, dependent on the actual collection of the taxes in the ensuing year.

The Supreme Court of the State, decided that under the limitation of the taxing power of the city, imposed by the Constitution and laws of Louisiana, it was incompetent for the court to order the city to levy a tax, in excess of that limit already reached by the tax levied; that none but contract creditors, whose rights, antecedent to the limitations, were protected by the Constitution of the United States, could demand the levy of a tax in excess of the limit prescribed by the laws of the State; that the relators were not contract creditors, but judgment creditors, for damages done by a mob; that creditors of that class had no contract whatever, nor any vested right in taxation; were bound by all the limitations on the taxing power established by the Constitution and laws, and could claim no tax in excess of that limitation, as was sought in this case by the relators: and that as the city had already levied taxes up to the limit prescribed by the Constitution and laws, the relators' demand must be denied. Record pp. 53. From that decision the relators prosecute this writ of error. Record pp. 59, 60, 61.

ARGUMENT.

This Court has no jurisdiction, to review the decision of the Supreme Court of Louisiana. The allegations in the petition are, that relators recovered their judgment against the city of New Orleans: that the judgments were registered for payment under Act No. 5, of 1870: that it was the duty of the city to levy taxes to pay the judgments: that the city had refused to levy such taxes: that under the laws the relator can issue no execution against the city: that without said levy relators are remediless, and it is averred the refusal to impose the taxes demanded, is in violation of vested rights and of the Constitution and laws of the United States. Record p. 2 It is difficult to extract from these averments any thing to sustain the jurisdiction of this Court to review the decision of the State Court. Revised Statutes of U. S., § 709. To give jurisdiction there must be a contract, and State legislation impairing it. The refusal of a State Court, to give effect to what the relators conceive to be, vested rights, would not give jurisdiction. The judgment brought here was based not upon contract, but on a tort. Citizens' Bank vs. Board Liquidators, 8th Otto, p. 140; Charles River Bridge vs. Warren, 11th Peters, p. 420; Jefferson Bank vs. S. Kelly, 1st Black., p. 436.

This Court will determine for itself and irrespective of the decisions of the State Courts, whether there is a contract, but the existence of the contract is essential to the jurisdiction. 1 Wallace, p. 144; Bridge Proprietors vs. Hoboken Cy.

The relators' demand grows out of the violence of a mob, which destroyed their property. No relation, intercourse or agreement of any kind, between the city and the relator is pretended. It is the law alone, independent of any consent or agreement, the essence of a contract, that forces the liability, on which the judgment is based. The law declared that the different municipal corporations, shall be liable for damages done to property by mobs or riotous assemblages within their limits. Revised Statutes of Louisiana, § 2453. The

judgments enforce the liability arising from the Statute. A contract is an agreement between parties out of which the obligation arises. Story on Contracts, page 1., Domat's Civil Law, 1st vol., p. 160. "A contract is an agreement by which one person obligates himself to another, to give, to do, or permit, or not do something expressed or implied in the agreement." Civil Code, Article 1761. This Court has defined what constitutes a contract: "It is a compact between two or more parties." Fletcher vs. Peck, 6th Cranch, p. 136. This case is here, because it is supposed by the relators, that their alleged right is protected by the provision in the Federal constitution, which prohibits the State from passing any law, impairing the obligations of a contract. Unless their right grows out of a contract, in the sense of that article, there is no foundation, for the jurisdiction. In Green vs. Biddle, 8th Wheaton, p. 90, this Court declared that a contract in the sense of the constitution, was an agreement of two or more parties. It could give no other definition. That definition excludes the alleged obligation of the relators, from the scope of the provision of the Federal constitution, under which the jurisdiction of this Court, is sought to be supported. The proposition is too plain for argument, that a liability arising out of a tort, created solely by law, is not an obligation based on a contract, protected by the Federal constitution. Nor did the judgments, change the origin of the obligation. They simply ascertained that the liability existed, and gave the means of enforcing it, according to the statute of the State. "A judgment is not an agreement. It can not be said of an action on a judgment that it is brought on a contract." Todd vs. Crumb, 5th McLean, p. 172. A judgment neither creates, adds to, nor detracts from a debt. It declares its existence, fixes the amount, secures the means of enforcing its payment. Bach vs. Twogood, 18th Louisiana Reports, p. 414, and the array of authorities in 1st Hennen's Louisiana Digest of Decisions, p. 726, No. 8. After, as before the judgment, the relators stand simply, as creditors for damages occasioned by a tort, for which the statute, and no contract, imposed a liability on the city.

In 1st Evans, Pothier on Obligations, p. 104, treating of the essence and cause of obligations, it is stated, obligations arise from 1st, contracts. 2d, engagement in the nature of contracts. 3d, injuries "delicta" etc. The distinction between contracts and injuries "delicta" is as marked in the classification of the great civilian, as is, the nature of the obligations, the classification describes and distinguishes, with so much clearness. The Louisiana Code treating of obligations, deduces them from contracts, quasi contracts, offences and quasi offenses. Civil Code, Articles 1760, 1761, 2315 of offences, "every act of man that causes damage to another" are torts, unlawful acts. The obligation arising from an unlawful act, is manifestly that which the relators' judgments recognize, and does not arise from any contract, express or implied.

Contracts are placed under the protection of the Constitution of the United States. No State can pass any law, impairing the obligation of contracts. But it is manifest the relators had no contract. Hence the obligation of a contract, could not be impaired by the legislation of the State. There is clearly no basis for the jurisdiction of this Court, afforded by the provision of the Federal Constitution, protecting the obligation of contracts against adverse legislation. All that the case required, and all that was disposed of by the decision of the State Court, was that under the laws of Louisiana, the limitation upon the taxing power of the city, was binding on a judgment creditor, whose judgments were recorded for damages done to their property by a mob, and that limitation having been reached, the creditors were without right to demand the imposition of a tax, in excess of the limit to pay their judgment, but must be remitted to such relief as the law afforded. Manifestly, the judgment turned upon or involved no Federal question.

It is contended that the relators had a vested right in 1873, when their property was destroyed, by the mob, to payment, by the exercise of the power of taxation, then limited at one dollar and seventy-five cents, on every one hundred dollars

of valuation, and that the subsequent limitations of the taxing power of the city contained in the legislation of 1876, and the Constitution of 1879, were violations of the relators' rights and of the Fourteenth Amendment to the Constitution of the United States, which forbids the State "to deprive any person of life, liberty or property, without due process of law." This argument assumes, that a right of property was involved, and has been invaded. The asserted right, disclosed in the petition and denied by the judgment of the Supreme Court, was to have a tax levied to pay the judgments. The claim was to a remedy, to satisfy a judgment. Surely, it cannot be maintained, that a remedy upon judgments, to which the relators conceived they were entitled in 1873, and before their judgments existed, is "property" within the sense of the fourteenth amendment. That amendment refers to property, in its legal as well as in its ordinary sense, but a supposed remedy to obtain satisfaction of a judgment, cannot be brought within the significance of "property" as used in that amendment.

It has been hitherto supposed, that the protection afforded by the Federal Constitution to remedies granted to creditors, by State laws, was derived solely from that provision, which prohibits legislation, impairing the obligation of contracts. In none of the numerous cases, which have contributed to our jurisprudence, on this subject, has it ever been deemed necessary to invoke any protection for the remedies to collect debt, other than that afforded by the provision, that contracts shall not be impaired. Remedies form part of the contract; they are the means of compelling its performance, and legislation which destroys the remedy, impairs the contract. 2d Story, Commentaries on the Constitution § 1385. Where the bond creditor of a municipal corporation has a right to a tax conferred by the law in existence when the bond issued, that right forms part of the contract. Van Hoffman vs. City of Quincy, 4th Wallace, p. 535.

The alleged right which the relators assert here, to have a tax levied, is the precise right, which, when it exists—according to settled jurisprudence, forms part of the contract, abundantly protected by the constitution, as it was framed, without amend-

ment. There was no necessity for the 14th amendment, to protect the relators' supposed right to the tax. If the right existed, it was already protected. The prohibition in the 14th amendment, that property shall not be taken without due process of law, has no reference whatever to that right, the relators assert. The asserted right, is as foreign to that provision, as it is also clearly without, the other provision, supposed to support the jurisdiction of this Court. The jurisdiction in this case, can derive no support whatever, from the 14th amendment.

So, the relators had no contract with any one, as is apparent from the record. With no contract to be enforced, there is no jurisdiction in this Court arising from the prohibition in the Constitution against impairing contracts. And the controversy involving no right of property, and there being no issue of the deprivation of property, no jurisdiction exists, by reason of the fourteenth amendment. No Federal question, arises when it is claimed that legislation of a State, impairs vested rights. The Constitution of the United States, interposes no protection for vested rights, supposed to be affected by State legislation, unless the obligation of a contract is impaired. The writ of error to a State Court, in Charles River Bridge vs. Warren Bridge, II Peters, 539, was sought to be sustained on the ground that the legislation impugned impaired vested rights. The Court observed: "It is very clear that in the form in which the case comes before us, being a writ of error to a State court, the plaintiffs in claiming under either of these rights, must place themselves on the ground of contract, and cannot support themselves upon the principle, that the law divests vested rights." And in Watson et als. vs. Mercer, 8 Peters, p. 110, the Court observed: "As to the first point it is clear, that this Court has no right to pronounce an act of the State legislature void, as contrary to the Constitution of the United States, from the mere fact, that it divests antecedent vested rights of property. The Constitution of the United States does not prohibit the States from passing retrospective laws generally, but only *ex post facto* laws." So no jurisdiction arises in this case, even if the plain-

tiff's theory of a vested right to taxation had accrued to him in 1873, or at any other time. The Memphis case in 97th U. S., was a writ of error to the Circuit Court of the United States. It brought up all questions. The writ to a State court, brings up only Federal questions. In the Memphis case too, the contract creditor had acquired a vested right. He had under the law a right to special taxation. Relators have none. All the provision in the budget, the statute authorized, was made. The decision in the Memphis case, reaches to no issue here. The writ of error should be dismissed for want of jurisdiction, and there is with this brief, a motion to dismiss which, without the motion, the Court would notice.

But if this Court could examine the judgment, it is manifestly correct.

Mandamus issues only, to compel the performance of mere ministerial duties. Under the laws of Louisiana, the registry of judgments, did not confer the right to have them placed in the budget. The Act of 1870, directing theregistry, contemplated some provision, but what that provision was to be, was discretionary with the Council, to be determined by the amount of necessary expenditures, to support the government, and by the limit of taxation, out of which every expense of the year was to be paid, (Acts 1870, p. 39, S. 19; Acts 1870, No. 5, p. 30, appendix). The discretion was just as clearly conferred, as if it was expressed. The limit of taxation was fixed. The legislative mandate was,—out of that limited taxation, all expenses of every kind and nature, were to be paid. No special tax, was authorized for judgments, but the act required some appropriation for judgments, i. e., such amount as was consistent with the amount of the other expenditures, absolutely essential to carry on the government, to be paid from the limited taxation. The relators' mistake is, in supposing they had any right to have the amount of their judgments placed on the budget. All the provision was made in the budget of 1879, that the conditions permitted, and all the law required. Record, pp. 8, 9. The relators stood be-

hind other creditors. The appropriation was insufficient. The direction of the law was, that the relators, should wait until their turn came, to be paid out of the money, next annually appropriated. Instead, the relators instituted their mandamus, to compel, not only what the city was not commanded to do, but what both the Statute and Constitution peremptorily prohibited, i. e., levy taxes beyond the limit allowed. The city might have been compelled to levy taxes, to the limit allowed by law. But that was done. The relators' trouble was beyond. Without any vested right to any special taxation: despairing of any relief by waiting their turn: as prescribed by the law under which they had proceeded: they conceived they had the right by mandamus, to exact what, if granted, would not be obedience to a ministerial duty, but a violation of the Constitution and laws. No court can compel the levy of taxes beyond the limit of legislative authority, unless on behalf of creditors not bound by the limitation.

Supervisors vs. United States, 18th Wallace, p. 77; Heine vs. Levee Commissioners, 19th Wallace, p. 657.

Decision of Supreme Court of Louisiana, Record, pp. 53, et seq.

Acts 1876, p. 56. Appendix.

Constitution of Louisiana of 1879, Art. 209. Appendix.

In 1873, when the mob violence occurred, the Act No. 5 of 1870, was in full force. No disputed claim, had any right to go upon the budget, until reduced to judgment. From the nature of the subject, claims for damages done by mobs, can only be determined, by judgments. In this case, the judgment for $26,850 was increased by the Supreme Court to that amount, from $15,000 awarded by the lower Court. See Record, pp. —, —.

Indeed, the Supreme Court, intimates great doubt of the correctness of its own judgment, and comments on the failure of the city authorities, to institute a more careful scrutiny into the circumstance of the alleged loss, so that they might have offered testimony to disprove the loss. Whether such claims for damages, against municipal corporations shall be recog-

well as by the settled character of the obligation, to which it extends. The relators here are not contract creditors, and are without the pale of the jurisdictional provisions of the constitution, invoked to sustain the jurisdiction in this cause. They are bound by the limitation on the taxing power, so clearly expressed in the laws and constitution of Lou siana, and when their demand was made in this case, there was in the budget of 1879, all the provision that could be made for judgment creditors, however inadequate that provision may be regarded. The complaint of the relator is not against the items of necessary expenditures, contained in the budget, which precluded any allowance for judgment greater than was made, but insisting upon the inadequacy of the tax levied by the city for 1879, for all purposes, judgments, included, the demand is for additional taxation to be enforced by the judicial mandate. There is manifestly no power in this court to sustain the demand. It would be to exercise taxation not only without the legislative authority, but against the legislative and Constitutional limitation. (Supervisors vs. United States. 18 Wallace, p. 71.) It is only the contract creditor, with rights prior to the limitation, that can invoke that mandate. On his application, when it issues, it creates no tax, the mandate does not enlarge on the legislative authority conferred, nor violate the legislative will. In such cases of contract protected by the Federal Constitution, the mandate of the court but simply secures the tax conferred by the legislative department, and declares it unaffected by the subsequent limitation. The relators, not contract creditors, have no title to withstand or overcome the limitation placed upon the taxing power. That restriction was in existence, before the right on the larger judgment had come into existence, and irrespective of that fact, whenever established, was valid against the class of creditors to which relator belongs. And no Court, on their demand, can compel the levy of a tax, other or greater than the Constitution and laws permit. The principle is elementary.

The relator assails the Premium Bond Act of 1876. When it was passed, the bonded debt of the City, had reached

twenty-two millions of dollars. The preambl
picts the conditions, under which the Act wa
necessity. The recital is: "Th- load of bonde
produced by reckless expenditures; the taxabl
come so reduced as to require five per cent. for
tion alone, to pay the interest on the debt
levying of that tax had become impossible; an
it was declared would only lead to further depr
and to bankruptcy, without benefit to the bo
United Sta'es Circuit Court in Ranger vs. City, 2nd Wood, P. 128 is suggestive and confirmatory to some extent of the financial condition. The Act was declared to have for its object, the liquidation of the entire bonded debt, by reduced taxation.

The Act undertook to make such provision for the public creditor, as was deemed practicable, in view of the grave difficulties, under which the Act was passed. It set apart each year, to be raised by taxation each year, a certain amount to be applied to the redemption of the public debt, so that in fifty years it was contemplated the entire debt would be redeemed.

The whole debt of $20,000,000, was divided in 10,000 series of $20,000 each. Each year a certain amount of these series was to b paid. The series to be paid was determined by drawing from all the serial numbers, series up to the amount to be redeemed. The drawn series besides payment were entitled to premiums. It was a scheme of finance, which had proved successful elsewhere. It was graduated on a rising scale of taxation, low for the first years of depression, but with augmented taxation each year, to meet the anticipated improvement in the public resources, and the consequent increased ability to pay the necessary taxes. See table of taxation filed with appendix. The scheme had the endorsement of the leading bankers and commercial men of the city—and upwards of nine millions of the bonded creditors of the city, accepted its provisions and funded their bonds for the new premium bonds. The scheme carries that amount of the public debt, and is open to all creditors, who choose to accept it.

About the same time that the Premium Bond act was

passed, the State of Louisiana found it necessary to scale its bonded debt and issue new bonds at a reduced rate of interest. The legislation of the State was before this Court in McComb vs. the Board of Liquidators, 92d United States Rep. p. 531. Both legislative acts were the result of the necessities of the times. The new Premium Bonds bear 5 per cent. interest. The old bonds surrendered bear 6, 8, and even as high as 10 per cent. Under the corporate powers the city had full authority to issue new bonds in exchange for old. Without the act of 1876, there was ample authority for every bond then issued. If the mode of payment of the public debt devised by the act of 1876; the method of dtermining what series of bonds were to be redeemed annually; features of the Act assailed in the relators' brief, were all stricken out, then the bondholders holding municipal bonds of undoubted validity, deprived of the provision of payment made in the Act of 1876, would simply fall upon their original rights and greater measure of taxation, intended to be superseded by the provisions of the Act of 1876, accepted by them. What basis, is there, then to assail the Premium Bonds and their mode of payment, the substitutes of valid bonds of the city, and a more burdensome taxation? What rights does that system of finance, the legislature established by the Act of 1876 invade? The scheme is denounced in the brief of the other side as intended to hinder lawful creditors, and a formidable array of authorities is produced in that connection. But the Act placed all the bond creditors on an equal footing, extended its provisions to all of them, and sought to make for all, such provision as in the legislative judgment, the condition of the times permitted. The Act, as establishing a system of discharging the public debt, has been sustained by the Supreme Court of Louisiana. See State ex rel. Lucas E. Moore vs. City of New Orleans, 32d Annual, p. 726. The Circuit Court of the United States sustained the Act against the attempt to interfere with its execution, by some of the bond or contract creditors who refused to accept its provisions. See Ranger vs. City, 24 Wood, p. 128.

But what concern have the relators with the legislation of Louisiana, providing a mode of liquidating the bonded debt of

the city, by a new issue of bonds, and by reduced taxation. What semblance of right of the Relators is invaded by legislation of that nature? What pertinence does the relators' assault upon the legislative provision for the bond creditors of Louisiana, bear to any issue exhibited by this Record? None.

True, the Act of 1876 limited taxation to one and one-half percentum for all corporate purposes. (Sec. 6th of Act.) It prohibited the levy of any tax other than that directed by the Act, for interest on the bonds, and for all purposes. It may be conceded that these provisions were violative of the constitution of the United States, in so far as they are designed to affect contract creditors, whose right to the levy of a tax for their bonds, existed when these provisions were made. (4th Wallace, p. 535.) The Supreme Court of the State, recognize that these provisions can not be enforced against such contract creditors. The existence in a statute, of provisions that cannot be enforced, or that are unconstitutional, produces this effect; those portions of the statutes are stricken out by judicial construction. The other portions of the statute stand. See 24th Pickering, p. 361; Cooley's Constitutional Limitations, S. P., 179. The relators' idea seems to be, that the prohibition and limitation inserted, as they contend, to hinder and obstruct creditors who had contract rights, avoids and renders null the entire statute. There is no support for such a proposition. It goes beyond any requirement, which justice exacts, or the law imposes. The law contents itself, with disregarding the objectionable provisions of the statute, and gives effect to the remainder. Grant that the Legislature of 1876, did intend to constrain all the bond creditors, to accept the Premium Bond Act; that in pursuance of that purpose, the provisions were inserted that no tax, other than the Premium Bond tax, should be levied, and no Court should have power to enforce the levy of any other. What follows? Not the nullity of the entire act, but the prohibitory provisions are deemed ineffective to bind contract creditors, with rights protected against such interference. The application of that rule, is all that could be demanded by a contract creditor, whose

right was invaded. More, is required by the argument of the other side.

If at the date of the Premium Bond Act, the relators had had for the payment of their judgments, a right to have a tax levied, with which right the limitation of taxation, proposed to interfere, they would have the basis, to claim that the limitation be disregarded. With no such contract or right the limitation bound them. In the language of the Supreme Court in the decision in this case "No person can require the City of New Orleans to levy a greater tax than the limit allows, (one per cent.), unless he can show that such right is so protected by the Constitution of the United States, that it could not be taken away by any action of the State." Record p. 59. The Relators have no such right.

One of the objects of the Premium Bond Act, announced in its title, was to reduce taxation. The enactment in the body of the Act, followed the title in that respect. Act Section 6th. What escape is there for the relators from the provision, on that subject, so clearly within the competency of the legislative department. The relators have to deal with that limitation. Their pretensions borrow no strength from their attack upon the scheme of taxation devised for the bond creditors. All that portion of the relators' brief, which undertakes to call in question, the mode of providing for the bonded debt, apart from that limitation, is foreign to any issue raised by the Record. The inquiry is: Was it not competent for the Legislature of Louisiana of 1876 to incorporate in the funding scheme of that year, a provision limiting taxation for all purposes, to bind all, except its contract creditors, with vested rights to taxation at and prior to the Act. The inquiry admits of but one auswer, and that is fatal to the relators' demand.

Without the Act of 1876, there is confronting the Relators, the limitation of taxation to one per cent. for all purposes, contained in the Constitution of 1879, enough of itself to defeat the demand of the relators. Either limitation, that of the Act, or that of the organic law, was a sufficient answer to that demand. The decision of the Supremee Court only announces the effect of the limitation on the power of taxation, placed on it by the competent authority.

It is respectfully submitted there is no jurisdiction to review the decision brought here by the writ of error, and if there was, the decision shotld be affirmed.

HENRY C. MILLER,

Of Counsel for the City of New Orleans.

Revised Stat. app. March 16, 1870

APPENDIX.

Sections 18 and 19 City Charter of 1870. (Session Acts 1870, p. 39.) March 26, 1870

SEC. 18. *Be it further enacted, etc.* That the Council of the city of New Orleans shall, for the purposes of this Act, once at a regular meeting in the month of December, and not oftener, in each and every year, lay an equal and uniform tax upon all real and personal property in said city, as prescribed and under the limitations imposed in this Act, for the ensuing year, which said taxes shall be due and payable at the office (of the) Department of Finance, from the first day of March to to the twenty-first day of July, inclusive; and at its first regular meeting in December, and on the same day annually thereafter, shall impose an annual license tax on trades, professions and callings, as herein prescribed, said licenses to expire on the thirty-first day of December in the year in which it was obtained, and which license tax shall be due and payable at the office of the Finance Department, from the first day of January to the twenty-eighth day of February, inclusive.

SEC. 19. *Be it further enacted, etc.,* That the Council shall, once in every twelve months, before fixing and deciding upon the amount of taxes and license to be assessed for the ensuing year, cause to be made out a detailed estimate exhibiting the various items of liabilities and expenditures, including the requisite amount for contingent expenses during said year, and shall cause the same to be published, for at least ten days, in the official journal of the city, and such rate of taxation, not exceeding one dollar and seventy-five cents on every hundred dollars of valuation, shall thereafter be fixed and assessed as, together with other revenues of the city, may be necessary to meet said estimated liabilities and expenditures. The adoption of said detailed estimate shall be considered as the appropriation of the amount therein stated for the purposes therein stated; and the administrator of Public Accounts shall not

audit, nor shall the Administrator of Finance draw or sign any check upon the Fiscal Agent therefor, of any claims, unless an appropriation therefor has been duly made, in accordance with this act.

Act No. 5, of 1870, referred to in the brief. Sess. Acts, p. 10.

Section 1st, prohibits any mandamus or other summary writ to compel the payment of money by the City of New Orleans, and restricts suitors to ordinary proceedings to obtain judgments for debt.

Section 2, prohibits the issue of any execution against the city, and proceeds, "but final judgment against the City of New Orleans, condemning said corporation to pay any sum in money, when the same shall have become executory, shall have the same effect in law of establishing and fixing the amount of the plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of said judgment, together with a copy of the plaintiff's petition, and the defendant's answer in the cause in which said judgment is rendered, together with the certificate of the Clerk of said Court, that such judgment is final and executory, to be filed in the office of the Controller in said city; and it shall be the duty of the Controller, or auditing officer of said corporation, to receive the same, and cause the same to be registered in his office, of the date on which the same shall have been presented, and when so registered it shall be the duty of the Controller to warrant on the Treasurer or disbursing officer of the corporation for the amount due thereon, without any special appropriation of money therefor by the Common Council; *provided, always*, that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure required to be made by the one hundred and twenty-fourth section of the Act of the Legislature, entitled 'An Act to consolidate the City of New Orleans, and to provide for the government of the City of New Orleans, and the administration of the affairs thereof,' approved March twenty, eighteen hundred and fifty-six, or such laws as may hereafter be enacted relating thereto."

SEC. 3. *Be it further enacted, etc.,* That in case the amount of money designated in the annual budget for the payment of judgments against the City of New Orleans at the date when any judgment against the said corporation shall have been final and executory, shall have been exhausted, the Common Council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses, a sufficient sum of money to pay said judgment or judgments, but if no such appropriation be made by the Common Council, then all judgments shall be paid in the order in which they shall be filed and registered in the office of the Controller from the first money next annually set apart for that purpose.

SEC. 4, Gives an action of damage against comptroller, treasurer, or auditing officer of New Orleans, for neglecting or wilfully delaying the payment of any money demand in the order and manner the same are to be paid, as provided for by the preceding sections.

March 26, 1870

The Premium Bond Act, and plan of redemption of bonded debt.

No. 31. AN ACT

To adjust, regulate and provide for the bonded debt of the City of New Orleans; to authorize the exchange of bonds of the City of New Orleans for other bonds, to be issued on the plan known as the premium bond plan; to adopt and give legislative sanction to the said plan as set out in ordinances Nos. 3130 and 3233, Administration Series of the City of New Orleans, approved on May 25 and August 31, 1875; to provide a fund to meet the semi-annual payments of the said bonds, known as premium bonds; to create a commission in the interest of creditors, and to give said commission the direction, control and management of the semi-annual allotments under said premium bond plan; to limit by contract the contracting of debt by the City of New Orleans; to limit taxation for all purposes therein, and to give relief to arrear tax-payers; to provide for the exchange of said premium bonds for other bonds in a certain contingency.

WHEREAS, The total debt, bonded and floating, of the City of New Orleans, has accumulated to an amount exceeding twenty-three millions of dollars, resulting from the occurence

of the civil war, and from reckless expenditures of public moneys;

Whereas, under the depressing influence of the consequences of the late war, and the disasters produced by the overflows in this State, and other causes, the taxable property of the City of New Orleans has become so reduced in value as to require taxation at the rate of at least five per cent. per annum to liquidate the debt as established by the acts authorizing the various issues of the same; and

Whereas, The levying of a tax at so exorbitant a rate renders the collection impossible;

Whereas, The continuation of the levying of a tax beyond the ability of the property to pay, leads to a further destruction of the assessable property of the city, and the consequent shrinkage of the common pledge of the creditors, tending to a continuation of the present embarrassment of the city affairs, and ultimate practical bankruptcy.

Whereas, The City Council of the city of New Orleans have adopted a plan for the liquidation of the city's indebtedness looking to the payment of creditors in full, obtaining thereby the indulgence necessary for the public well-being and the maintenance of the public honor; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That the Mayor and Administrators of the City of New Orleans, or such other officers, aldermen or administrators as may hereafter be ordained and established, be and they are hereby authorized and directed to exchange all recognized and valid bonds of the city of New Orleans and the late cities of Jefferson and Carrollton for bonds known as the premium bonds of the city of New Orleans, in accordance with the plan adopted by the City Council, and approved by the mayor on the twenty-fifth May and thirty-first August, 1875. The said premium bonds shall be dated the first of September, 1875, and bear interest at the rate of five per cent. per annum, from the fifteenth of July, 1875; they shall be signed by the Mayor, the Administrator of Finance, and the Administrator of Public Accounts, as commissioners of the consolidated debt,

and countersigned, when issued, by such parties as the Council have designated heretofore, or may hereafter designate, with the anthorization of the supervising committee hereafter named.

SEC. 2. *Be it further enacted, etc.*, That all outstanding bonds bearing interest shall have the interest computed up to the first day of July, 1875, and thereafter the said bonds, when exchanged, shall bear interest as provided in the ordinance above ratified, which provides for the premium bonds.

SEC. 3. *Be it further enacted, etc.*, That the allotment of series and premiums which have been made by virtue of ordinance No. 3233, Administration series, adopted August 31, 1875, by the City Council, are hereby ratified and approved, and that further allotments shall take place on the fifteenth day of April and the fifteenth day of October of each year, and of premiums on the fifteenth day of January and the fifteenth day of July of each year, or on such other date as the Council may prescribe; provided that payments be not made later than the fifteenth day of March and the fifteenth day of September of each year.

SEC. 4. *Be it further enacted, etc.*, That a permanent committee of six citizens is hereby created to represent and supervise all matters and interest under the operation of this act; they and their successors shall at all times have free access to the records of the consolidated debt, and may exercise control and supervision over the allotments and premiums, the registry and cancellation of bonds as they may deem necessary, when not in conflict with the provisions of this act; they shall fill all vacancies in their number by death, resignation or otherwise. The said committee shall, at present, be composed as follows: John G. Gaines, Thomas A. Adams, August Bohn, J. H. Oglesby, Samuel H. Kennedy and George Jonas.

SEC. 5. *Be it further enacted, etc.*, That until all the bonds are funded as herein provided it shall be the duty of the commissioners of consolidated debt and the said supervising committee, immediately after the allotment of series, to invite by sealed proposals for the exchange of old bonds for drawn pre-

mium bonds remaining in the possession of the city; such proposals shall state the lowest price at which the old bonds are offered, payable in the drawn premium bonds valued upon their face, capital and interest; the said bids, if any, to be opened by the commissioners of the consolidated debt and at least one of the said supervising committee, the right to reject any or all bids being reserved to the City Council; *provided*, that when bids are rejected, further offers shall be invited, either before or after distribution of premiums for exchange of all other bonds, or for cash, as the case may be.

SEC. 6. *Be it further enacted, etc.*, That it shall be the duty of the City Council, in the month of December of each year, or in the annual budget annually adopted for the ensuing year, to include an amount sufficient to meet and pay the principal and interest of the premium bonds, together with premium included, in the several allotments of series and premiums fixed for such year by the aforesaid ordinances and this act. It shall be the duty of the Council annually to levy an equal and uniform tax on all the assessed property within the corporate limits of the city, at a rate sufficient to provide the amount included in the budget as aforesaid, and said tax so levied shall constitute a special fund to be used for no other purpose than the payment of said bonds and interest on the said premiums comprised in said allotments, and the funds so raised shall be placed to the credit of an account to be called the premium bond account, and no money from said fund shall be paid out except on the joint authority of the commissioners of the consolidated debt. The said tax so to be raised shall be denominated the premium bond tax, and shall be separately mentioned in the tax rolls and receipts; *provided*, that the taxable power of the corporation of the City of New Orleans for all purposes, including general administration, school, police, lighting, salary of officers, court expenses, and every other purpose of government, including the sum to be raised to pay the premium bonds, as above stated, shall never, until the full, complete and final payment of the said premium bonds, exceeds the rate of one and one-half per centum on the dollar of all the assessed value of property subject

to taxation within the limits of the said City of New Orleans. The above limitation of the taxable power of the corporation in hereby declared to be a contract, not only with the holder of the said premium bonds, but also with all residents and taxpayers of the said city, so as to authorize any holder of said premium bonds, resident or taxpayer, to legally object to any rate of taxation in excess of the rate herein limited. It being also a part of the consideration of this contract that the City of New Orleans shall be incompetent to incur any debt or obligation, as now provided by the constitution of this State, until the final payment and extinction of the premium bonds aforesaid.

SEC. 7. *Be it further enacted, etc.*, That no tax for the payment of bonds or interest on bonds other than that authorized by the preceding sections, shall be levied either for the year 1876, or any year or years thereafter by the City of New Orleans, and that all existing laws requiring or authorizing the City Council to levy any tax whatsoever for bonds or interest on bonds, other than said premium bonds, be and the same are hereby repealed; and it shall be hereafter incompetent for any court to mandamus the officers of said city to levy and collect any interest tax other than that provided in this act, or in case of such mandamus, by a receiver or otherwise, to direct the levy and collection on any such tax.

SEC. 8. *Be it further enacted, etc.*, That all bofids issued in exchange for others, all allotments made and all things done by the City Council or the Mayor and Administrators, previous to the passage of this act, under and by virtue of said premium bond plan and the ordinances Nos. 3130 and 3233, be and are hereby approved and ratified, and are continued in force, and are recognized as having been lawfully done pursuant to powers vested in the Council by the Constitution and laws.

SEC. 9. *Be it further enacted, etc.*, That it shall be the duty of the City Council to at once prepare a statement in detail of the outstanding bonds of the City of New Orleans, to be funded as aforesaid, and whenever any of said bonds are funded for premium bonds, or offered to the city for drawn premium bonds or drawn premiums, the said bonded debt so exchanged shall be

immediately canceled by the commissioners of the consolidated debt, and said supervising committee or member thereof shall prepare a statement of the bonds so canceled, to be made public.

SEC. 10. *Be it further enacted, etc.*, That no city property of any kind shall hereafter be sold or conveyed in any manner except the proceeds be applied to the reduction of the bonded or floating debt.

SEC. 11. *Be it further enacted, etc.*, That in addition to the obligation of the said city to provide annually the sum required for the execution of the premium bond plan, at least a tax of one-half of one per cent. annually, to be used in the execution of the provisions of this act; and if the product of said half of one per cent. be more than adequate for the payment of the drawn premium bonds, and the premiums as above provided, then the surplus to be used in retiring the outstanding bonds; *provided*, said half of one per cent. taxation be considered as part of the one and a half per cent. taxation to which the taxing power of the city is limited in this act; the intention of this section being to limit the city taxation to one and one-half per cent. annually, until the entire extinction of the bonded debt; to authorize the Council to levy annually out of the one and one-half per cent taxation a sum adequate to the annual execution of said premium band plan, and after the year 1881 to levy at least one-half of one per cent. for the carrying out of said plan, and to distribute the surplus realized therefrom, if any, in retiring the outstanding bonded debt.

SEC. 12. *Be it further enacted, etc.*, That whenever under the operations of this Act the bonded debt of the City of New Orleans shall be reduced below eight millions of dollars, the creditors holding the same shall be entitled to convert the same into bonds bearing six per cent. interest per annum, payable in twenty years from their date, to be dated after the reduction aforesaid, the interest to be paid semi-annually. A sinking fund of at least two hundred thousand dollars to be provided for along with the interest by adequate annual taxation, all the limitations hereinabove provided on taxation and debt to be applicable after the issue of said bonds until payment thereof.

SEC. 13. *Be it further enacted, etc.*, That all costs, interest and charges due on arreared city taxes up to the year 1875, inclusive, be and the same are hereby remitted; that it shall be the duty of the city government, immediately after the passage of this Act, to prepare a list of the valid outstanding floating debt of said city; that after the preparation of the list of the floating debt provided in this act any of said debt shall be receivable in payment of said taxes, as follows: For all taxes due previous to the year 1865, inclusive, the said outstanding floating debt shall be received by the said city at the rate of one hundred dollars of floating debt for two hundred dollars of taxes; for all taxes due from 1866 to 1873, inclusive, the said outstanding floating debt shall be received at par; *provided* said taxes shall be paid within the year 1876.

SEC. 14. *Be it further enacted, etc.*, That all drawn premium bonds shall be receivable by the city for all dues, licenses, taxes and debts of any description at their face value and interest.

SEC. 15. *Be it further enacted, etc.*, That this Act in all its provisions and limitations be held a contract between the City of New Orleans, the holders of said premium bonds and the taxpayers or residents of said city, so as to authorize any of the contracting parties to resist any and all contracting of debt by the said City, or increase of taxation above the rate limited in the previous provisions of this Act.

SEC. 16. *Be it further enacted, etc.*, That this act take effect from and after its passage; that all laws or parts of laws inconsistent herewith be and the same are hereby repealed, and that all ordinances of the City of New Orleans conflicting with this Act be and are hereby repealed.

(Signed) E. D. ESTILETTE,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE.
Lieutenant-Governor and President of the Senate.

Approved March 6, 1876.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:

P. G. DESLONDE,
Secretary of State.

PLAN OF REDEMPTION.

DATE.	Drawings	Series.	Value of Bonds & Interest.	No. Bonds Redeemed Semi-Ann'y.	Amt of Dols Semi-Annually.	Premiums Paid Semi-Annually.	Total Am't of tax req'd Annually.
1876	Janu'ry	50	20½	5000	102500	50000	
	July	50	21	5000	105000	50000	307500
1877	Janu'ry	75	21½	7500	161250	50000	
	July	75	22	7500	165000	50000	426250
1878	Janu'ry	90	22½	9000	202500	50000	
	July	90	23	9000	207000	50000	509500
1879	Janu'ry	105	23½	10500	246750	50000	
	July	105	24	10500	252000	50000	598750
1880	Janu'ry	105	24½	10500	257250	50000	
	July	105	25	10500	262500	50000	619750
1881	Janu'ry	105	25½	10500	267750	50000	
	July	105	26	10500	273000	50000	640750
1882	Janu'ry	105	26½	10500	278250	50000	
	July	105	27	10500	283500	50000	661750
1883	Janu'ry	105	27½	10500	288750	50000	
	July	105	28	10500	294000	50000	682750
1884	Janu'ry	105	28½	10500	299250	50000	
	July	105	29	10500	304500	50000	703750
1885	Janu'ry	105	29½	10500	309750	50000	
	July	105	30	10500	315000	50000	724750
1886	Janu'ry	105	30½	10500	320250	50000	
	July	105	31	10500	325500	50000	745750
1887	Janu'ry	105	31½	10500	330750	50000	
	July	105	32	10500	336000	50000	766750
1888	Janu'ry	105	32½	10500	341250	50000	
	July	105	33	10500	346500	50000	787750
1889	Janu'ry	105	33½	10500	351750	50000	
	July	105	34	10500	357000	50000	808750
1890	Janu'ry	105	34	10500	362250	50000	
	July	105	35	10500	367500	50000	829750
1891	Janur'y	105	35½	10500	372750	50000	
	July	105	36	10500	378000	50000	850750
1892	Janu'ry	105	36½	10500	383250	50000	
	July	105	37	10500	388500	50000	871750
1893	Janu'ry	105	37½	10500	393750	50000	
	July	105	38	10500	399000	50000	892750
1894	Janu'ry	105	38½	10500	404250	50000	
	July	105	39	10500	409500	50000	913750
1895	Janu'ry	105	39½	10500	414750	50000	
	July	105	40	10500	420000	50000	934750
1896	Janu'ry	100	40½	10000	405000	50000	
	July	100	41	10000	410000	50000	915000
1897	Janu'ry	100	41½	10000	415000	50000	
	July	100	42	10000	420000	50000	935000
1898	Janu'ry	100	42½	10000	425000	50000	
	July	100	43	10000	430000	50000	955000
1899	Janu'ry	100	43½	10000	435000	50000	
	July	100	44	10000	440000	50000	975000
1900	Janu'ry	100	44½	10000	445000	50000	
	July	100	45	10000	450000	50000	995000
1901	Janu'ry	100	45½	10000	455000	50000	
	July	100	46	10000	460000	50000	1015000
1902	Janu'ry	100	46½	10000	465000	50000	
	July	100	47	10010	470000	50000	1035000

PLAN OF REDEMPTION—Continued.

DATE	Drawings	Series.	Value of Bonds & Interest.	No. Bonds Redeemed Semi-Ann'y	Amt of Dols Semi-Annually.	Premiums Paid Semi-Annually.	Total Am't of tax req'd Annually.
1903	Janu'ry	100	47½	10000	475000	50000	
	July	100	48	10000	480000	50000	1055000
1904	Janu'ry	100	48½	10000	485000	50000	
	July	100	49	10000	490000	50000	1075000
1905	Janu'ry	100	49½	10000	495000	50000	
	July	100	50	10000	500000	50000	1095000
1906	Janu'ry	100	50½	10000	505000	50000	
	July	100	51	10000	510000	50000	1115000
1907	Janu'ry	100	51½	10000	515000	50000	
	July	100	52	10000	520000	50000	1135000
1908	Janu'ry	100	52½	10000	525000	50000	
	July	100	53	10000	530000	50000	1155000
1909	Janu'ry	100	53½	10000	535000	50000	
	July	100	54	10000	540000	50000	1175000
1910	Janu'ry	100	54½	10000	545000	50000	
	July	100	55	10000	550000	50000	1195000
1911	Janu'ry	100	55½	10000	555000	50000	
	July	100	56	10000	560000	50000	1215000
1912	Janu'ry	100	56½	10000	565000	50000	
	July	100	57	10000	570000	50000	1235000
1913	Janu'ry	100	57½	10000	575000	50000	
	July	100	58	10000	580000	50000	1255000
1914	Janu'ry	100	58½	10000	585000	50000	
	July	100	59	10000	590000	50000	1275000
1915	Janu'ry	100	59½	10000	595000	50000	
	July	100	60	10000	600000	50000	1295000
1916	Janu'ry	100	60½	10000	605000	50000	
	July	100	61	10000	610000	50000	1315000
1917	Janu'ry	100	61½	10000	615000	50000	
	July	100	62	10000	620000	50000	1335000
1918	Janu'ry	100	62½	10000	625000	50000	
	July	100	63	10000	630000	50000	1355000
1919	Janu'ry	100	63½	10000	635000	50000	
	July	100	64	10000	640000	50000	1375000
1920	Janu'ry	100	64½	10000	645000	50000	
	July	100	65	10000	650000	50000	1395000
1921	Janu'ry	100	65½	10000	655000	50000	
	July	100	66	10000	660000	50000	1415000
1922	Janu'ry	100	66½	10000	665000	50000	
	July	100	67	10000	670000	50000	1435000
1923	Janu'ry	100	67½	10000	675000	50000	
	July	100	68	10000	680000	50000	1455000
1924	Janu'ry	100	68½	10000	685000	50000	
	July	100	69	10000	690000	50000	1475000
1925	Janu'ry	100	69½	10000	695000	50000	
	July	100	70	10000	700000	50000	1495000
	Series.	10000		1000000	45428000	500000	50428000

SEMI-ANNUAL PREMIUMS.

1	Premium of	$5000	$ 5000
5	"	1000	5000
20	"	500	10000
50	"	100	5000
100	"	50	5000
1000	"	20	20000
1176	Premiums		50000

This Schedule of Premiums may be revised hereafter without reducing the amount.

Article 209, Constitution of 1879:

The State tax on property for all purposes whatever, including expenses of government, schools, levees and interest, shall not exceed in any one year six mills on the dollar of its assessed valuation, if the ordinance regarding the bonded debt of the State is adopted and ratified by the people; and if said ordinance is not adopted and ratified by the people, said State tax for all purposes aforesaid, shall not exceed in any one year five mills on the dollar of the assessed valuation of the property; and no parish or municipal tax for all purposes whatever, shall exceed ten mills on the dollar of valuation; *provided*, etc.

18 Wallace

24 Wallace

99 U. S. 591

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18 Wallace

21 Wallace

99 U. S. 591

109-285

109-285

United States Supreme Court.

No. 237. Nov 34

ON THE DOCKET FOR THE OCTOBER TERM, 1882.

THE STATE OF LOUISIANA EX REL. FOLSOM BROTHERS, A FIRM COMPOSED OF GEORGE FOLSOM AND HENRY FOLSOM, PLAINTIFFS IN ERROR,

VERSUS

THE MAYOR AND ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

Petition to Me

Additional Brief for Plaintiffs in Error.

ROBERT MOTT,
of Counsel.

TO THE

SUPREME COURT

OF THE

UNITED STATES.

The petition of Folsom Brothers respectfully represents:

That petitoners are the relators in the suit of the State of Louisiana on the relation of Folsom Brothers, plaintiffs in error, vs. Mayor and Administrators of the City of New Orleans, defendants in error.

That the said suit was submitted under the 20th rule, and considered, and ordered to be placed on the docket again to come up in its regular place, the Court being divided in opinion.

That the case was argued and submitted at the October Term, 1882, and has been under consideration since.

That the case has been long under consideration, and your petitioners believed that your Honors would be willing to receive any argument or authorty that would elucidate the questions under consideration. And instructed their counsel to prepare an additional brief, and transmit the same to the clerk to be filed and submitted to you, but they are in-

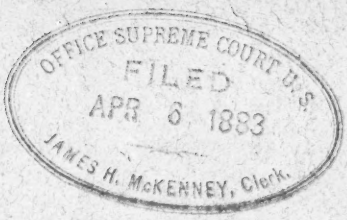
formed that there is a rule of court which prevents such being done, that no brief can be filed after the case shall have been submitted; and while submitting to the wisdom of the rule, your petitioners suggest, that in a case like theirs, the rule should be relaxed and the briefs be considered. For this case has been so often submitted and so much considered, that they think they should be permitted to be again heard.

A copy of their brief has been served on the counsel of the appellees.

Praying for the relief asked, your petitioners submit themselves to the kind consideration of the court.

ROBERT MOTT,
of Counsel.

109-280



SUPREME COURT OF UNITED STATES.

No. ——.

THE STATE EX REL., FOLSOM BROTHERS

versus

THE CITY OF NEW ORLEANS.

Supplemental Brief for the City of New Orleans.

HENRY C. MILLER,
Attorney for City of New Orleans.

L. Graham & Son, Print, 127 Gravier Street.

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ROBERT MOTT,
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109-280

SUPREME COURT OF UNITED STATES.

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Supplemental Brief for the City of New Orleans.

HENRY C. MILLER,
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SUPREME COURT OF UNITED STATES.

No. ——.

THE STATE Ex Rel., FOLSOM BROTHERS

versus

THE CITY OF NEW ORLEANS.

Supplemental Brief for the City of New Orleons.

The original brief for the defendants in error, presents the statement of the facts of the case, and the provissions of the Statutes of the State, applicable to the contrary.

The prominent enquiry in the case is, whether the change directed by the Legislature, after the demand of the plaintiffs in error arose, in the rate of taxation to be imposed by the City of New Orleans, furnishes any basis for the jurisdiction of this Court, or any cause of complaint to the plaintiffs in error.

The plaintiffs in error sued the City, in the State Court, for damages done to their property by mob violence, for which, the Statute of the State made the City responsible. The cause of action (i. e., the mob violence), accrued to plaintiffs in 1873, Record, p. 48. Then, the maximum of taxation permitted by the Legislature, to be imposed by the City, was one and three-quarters per cent. See the Act of 1870, Session Acts, p. 37, section 12, Par. 20, S. 19, published in appendix to defendant's original brief.

The act of 1872, Session Acts No. 73, p. 124, section 15, limited the city taxation for all purposes, excluding the taxes for the bonded debt, to one and one-quarter per cent. See appendix to this brief. As fully one-half of one per cent. was required for the bonded debt, practically the Act of 1872,

preserved the limitation of the Act of 1870, for purposes excluding the bonded debt. In 1876, the Legislature enacted that the maxium of city taxation for all purposes, should not exceed one and one-half per cent. See Act No. 31 of 1876, S. 6th, appendix to original brief. The Constitution of 1879, limited taxation for all purposes to ten mills—Constitution, Art. 209, contained in appendix. Thus it will appear the Acts of 1870, of 1872 and of 1876, and the Constitution of 1879, all limited the measure of taxation.

The Act of 1872, recognized no limitation for the bonded debt. But the measure of taxation for all other purposes, was fixed by said act. Police, lights, schools, judgments for ordinary debts, and all other objects of municipal government, were to be provided for out of the general tax authorized and limited. No special tax created for the class of obligations, held by the relator, is involved here. His cause of complaint is in respect to the change directed by the Act of 1876 and Constitution of 1879, in the measure of taxation for all corporate purposes, which he supposes furnishes him with his grievance.

The judgment of the Supreme Court of the State, which the plaintiff in error brings here for review, Record, p. 53, was that the plaintiffs had no cause of complaint.

It is clear the plaintiffs in error, exhibit no case, under the contract clause of the Federal Constitution, article 1st, section 10. The demand is for damages, done by a mob. It is solely by statute, that the city is made responsible for that mob violence. Revised Statutes, section 1453 appendix. The demand is based on a tort.; not a contract or the semblance of one. The mere statement of the plaintiffs' demand, is enough to discriminate his case, from one of which this Court can take jurisdiction, under the contract clause of the constitution. Having no contract to be impaired, the plaintiffs, under that provision of the constitution, exhibit no case for the jurisdiction of this Court, to review the decision of the State Court,

and shows no cause of complaint against the legislation of the State. The authorities to distinguish the plaintiffs' cause of action from a contract, are here repeated, extracted from defendant's original brief.

1st Evans Pothier on Obligations, p. 104;
Civil Code of Louisiana, Arts. 1760, 1761, 2315;
Fletcher vs. Peck, 6th Cranch, p. 136;
Todd vs. Crunito, 5th McLean, p. 172.

The 14th Amendment to the Constitution of the United States, repeats and applies to the States, the prohibition contained in the 5th Amendment to the Constitution of the United States: "nor shall any State deprive any persons of life, liberty or property without due process of law." In what respect is it conceived that this amendment affects the plaintiffs' case?

His cause of action, accrued in 1873. One of plaintiffs' judgments, was recovered in 1874, and one 1877. Rec., pp. 12, 27, 48. As stated in the original brief for defendants, when the cause of action arose, and when the judgments was recovered, the Act of 1870, No. 5, sess. acts, p. 10 (printed in appendix to original brief), provided that judgments against the city should be registered, that they should be paid in order of registration, *provided*, that in the annual budget of expenses required by law to be made by the City Council, there should be sufficient money set apart out of the taxes of the year, for the purposes of paying judgments: that in case the money set apart was not sufficient, the act further provided that the Common Council should have power, if they deemed proper, to set apart a sufficient sum: otherwise all judgments were to be paid in the order of registry, from the first money next annually set apart. This budget act has been construed by this Court, see Louisiana vs. New Orleans, 102d U. S., p. 203. 103 U. S., p. 358.

The plaintiffs in error registered these judgments under this Budget Act, Record, p. 13. The appropriation in the budget for judgments, when they registered, was but $10,000, Rec., pp. 18, 20. The registered judgments were upwards of $290,-

000—the relators' judgment for the larger account being last on the list. So the prospect of payment not being encouraging, the relatiors' application for the mandamus was filed. The relief prayed was, that the city should be ordered to budget, and levy taxes to pay all the registered judgments, $290,000, including those of relators, Record, p. 23. See defendants, revised brief, pp. 4, 5, 6.

The plaintiffs' theory is, that when the cause of action arose, and when the judgments in their favor were rendered, the Budget Act of 1870 and the Acts of 1870 or of 1872, fixing maximum taxation, afforded a right for the payment of their judgments, and that the Act of 1876, limiting taxation to one-and-a-half, undertook to abridge or impair that right. The plaintiff in error supposes that in this respect, there is presented a case in which property has been attempted to be taken, under color of State legislation, in violation of the 14th Amendment to the Federal Constitution.

It is believed, that this is the first attempt to apply the property clause, contained in the 5th and 14th Amendments, as it is sought to be applied in this case. The amendment was undoubtedly intended, to protect the right of property. Property was used in its ordinary sense. What right of property in any accustomed significations, does the plaintiff in error exhibit? Would it not be a strain upon language, to apply the property clause of the Constitution, to reach any interest which the plaintiff in error exhibits?

In the case of Beer Company vs. Massachusetts, 97th U. S., p. 30, the Court implied that under the guise of the police power, property in actual existence, could not be destroyed. The Court in that connection referred to 18th Wall., p. 129. Manifestly, these cases and others, illustrate what was intended to be protected by the Amendment. Does not the language of the Amendment and the adjudged cases all indicate that the Amendment cannot reach the case here, in which no right of property, can be said to be involved.

There is a line of adjudged cases, that hold that the bonded creditor has a right to the tax, directed to be levied to pay the bond. That tax is part of his contract. No subsequent legis-

lation can impair or take it away. See Van Hoffman vs. City of Quincy, 4th Wall., p. 535; Butz vs. City of Muscatine, 8th Wall., p. 575, and the line might be indefinitely prolonged. Such rights in taxation are recognized, not under the 5th or 14th Amendments, but under the contract clause of the Constitution.

But the power of taxation, is in the legislative department, without qualification, except so far as it restrained by the necessity of preserving the rights of contract creditors. Taxation subject to that restriction, in favor of bond creditors, is to be exerted at the pleasure of the Legislature. It may recall or modify it. In this case, this Court is asked to recognize a right to taxation, of a judgment creditor, not a creditor by contract, within the protection of the Federal Constitution, but a creditor for a tort, the opposite of a contract. He never had any special tax. His claim is to possess some right, in that measure of taxation, intended for all corporate purposes. He supposes that he has a right to have exerted the maximum of taxation, once permitted for all purposes, when his cause of action arose, notwithstanding that the legislative department has thought proper to reduce that maximum. If the maximum permitted by the Act of 1870, or of 1872, were levied, his chance of payment, he perhaps contends will be improved. But is that the basis upon which a judgment creditor, can be said to have a right of property in taxation. Manifestly, no right of property in general taxation, can be recognized in any creditor. General taxation for corporate purposes must be deemed to be exclusively a legislative power, that can be modified at the legislative pleasure. It is only taxation for contract debts, that the Legislature cannot withdraw or modify, until the debts are paid. In this view, the plaintiffs in error here, can have no cause of complaint, because of the change in the maximum of city taxation, effected by the legislation since 1876. No right of property of the plaintifis was invaded by that legislation. This was the view of the State Supreme Court, Rec., p. 53.

Under no view of this case, it is submitted, does any federal

question arise. The plaintiff exhibits no contract or no property right within the jurisdiction of the Constitution.

But if the Court could entertain jurisdiction, there are other difficulties in the way of the plaintiff in error. There is no warrant in law, for the relief he asks. The relief demanded in the petition for the mandamus is, that the city administrators shall place upon the budget of the city expenses for the year 1879, and all succeeding years until the same be fully paid, all the judgments including those of plaintiffs, and to levy taxes to pay the whole of said judgments. Rec., p. 3. Neither in whole or in part, can this relief be given.

If it be supposed that the plaintiffs have any right to demand, regardless of the existing limitation that the full measure of taxation permitted by the act of 1870, or by the act of 1872, be levied, that would be all that could be demanded. The budget act of 1870, does not entitle the plaintiffs in error, to demand that all judgments against the city, shall be placed upon the annual budget for 1879, or on the budget of any year. The law is that the budget of revenues and receipts, shall exhibit the annual receipts and annual expenditures. Out of the annual revenues from taxation licenses and all sources, all expenses of the city are to be paid. The law did not contemplate that the judgment debts of the city should go upon the budget for payment, least of all, to be paid out of the revenue of any one year. It provided otherwise.

The expenditures must conform to the budget, that is, the theory on which the budget is directed to be framed. If all the judgment debts, $290,000, were put upon the budget for any one year, there would have to be displaced items for schools, lights, police, etc. These objects of municipal expenditures, could not be provided for, out of the annual revenues and judgments to the amount of $290,000, also paid. See budget law, Acts 1870, sections 18–19, Session Acts pp. 38–39, appendix. See budgets 1879, Record, pp. 18, 19, 20. Under the law, the judgment debts are not directed to be put upon

the budget, at all. The direction is, that on the budget there shall be an appropriation made for judgments, such as the city is enabled to make from its annual revenues; the amount of that appropriation is in effect left to the discretion of the City Council. Judgments were to be registered, not budgeted. When the judgment was reached in order of payment, it was to be paid, if the money appropriated was sufficient, otherwise out of the contingent fund if deemed proper, or that not done, out of money next annually set apart on the budget. Under this Act the functions of the City Administrators, with respect to the amount to be applied to judgments, were manifestly discretionary. This is the Act which the the relator supposes is to be enforced in the mode, demanded in his petition. The contrast between what the plaintiffs demand, and the budget act which they seek to enforce, is striking.

It is hardly necessary to do more than state, that in an application for mandamus, the duty proposed to be enforced, must be a duty exacted by law. That is to say, the act sought to be enforced, must be one in reference, to which the law recognizes no discretion, on the part of the official or corporation, to do, or not to do. The Budget Act does require an appropriation to pay judgments, to be made in the annual budget. That has been done, see Budget, Rec., p. 20. The amount is left to the discretion of the Administrators. That has been exercised, see Test. Glynn, Rec., p. 9. It is submitted, that no right of mandamus could issue to compel the city to place all the registered judgments on the budget, nor any of the judgments, without plain violence to the act. Instead of enforcing a duty imposed by the act, the writ would create a duty, to be performed in violation of the Act. So, too as to the demand, that taxes shall be directed to be levied to pay all the regulated judgments, including those of the State. This demand is in plain excess, of any duty or power of the City Administrators. The Adminstrators, under the budget law, are to control all taxation that is raised. Out of all the revenues, the expenses of municipal administration are all to be defrayed, and such appropriation for judgments made, as is deemed practicable in the discretion of

the Administrators. Where, then, is the basis to ask for a writ of mandamus, to compel the city authorities to apply taxes to an amount sufficient to pay $290,000 of registered judgments? The amount of taxes to be applied, must be determined under the act, by the order of the registration, and by the amount appropriated. So the mandamus in this case, to compel the city to budget judgments, to levy taxes to pay $290,000 of registered judgments, and to apply taxes to that amount, widely departs from the duties imposed by law, and if issued, would, in effect, require the performance of acts, not only not enjoined, but in effect prohibited by the law. Manifestly, the plaintiffs have no basis for the mandamus they ask.

If on any theory of right in the plaintiffs, the mandamus could issue to enforce the levy of the full measure of taxation permitted in 1870 and 1872, the plaintiffs would still be subject to the budget act, as to the amount to be annually appropriated for judgments, and would have to abide, the order of registry of the judgment for payment. If that maximum taxation was ordered to be levied, Admininistrators could not be ordered by the writ of mandamus, to apply any specific part of it to pay judgments. Because, the amount to be applied to that purpose is discretionary under the law. No writ of mandamus can issue to compel perormance of an act, resting in the discretion, of those who are to perform it.

The plaintiffs having availed the registry act, it is clear they cannot ask by writ of mandamus for relief not contemplated or recognized by that act. The judgment of the State Supreme Court properly refused the mandamus; that there is no ground on which this Court can review or reverse the decision. The decision of the State Court maintained the return of the administrators. The return was. that under the law, the rule of taxation was limited, that the maximum had been levied, and that the defendants had no power; least of all were they directed to do the acts, the performance of which was demanded in the petition for the mandamus. See return Rec., p. 25 judgment Rec., p. 53 referring to original brief.

Respectfully submitted,

HENRY C. MILLER,

Attorney for City of New Orleans.

APPENDIX.

Section 2453 Revised Statutes making city responsible for damages.

Section 2453. The different municipal corporations in this State shall be liable for the damages done to property by mobs or riotous assemblages in their respective limits.

Act of 1872, Sess. Acts, p. 124; S., 14, 15.

Sec. 15th. Be it further enacted, etc., That the Council, after the adoption of the estimate, shall proceed to levy the annual taxes required, to-wit:

First. The city debt tax, which shall be based upon the detailed estimate of the sinking funds, and interest falling due. For all bonds, for which no other retiring provision exists by law, an estimate shall be included, of not less than two, nor more than ten per cent. of the face of the bonds outstanding of any of the several issues, which shall be applied to the retiring of bonds offered at the most advantageous rates, no bid to be accepted higher than par, and the right reserved to reject all bids. No limit, other than herein laid down shall apply to this tax, which is hereby declared a vested right of the bondholders interested.

Second. A tax for current city expenses, including police, and exclusive of interest and schools. This tax shall in no year exceed *one and a quarter per cent.* upon the assessed value of real, personal and mixed property.

The tax shall bear the name of the year in which they shall be collectable, and the assessment upon which they shall be made, shall be termed the assessments for the said year.

The article 209, of the State Constitution of 1879, limiting taxation:

Art. 209. * * * * * . No parish or municipal for purposes whatsoever shall exceed ten mills on the dollar of valuation, * * * * * *

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NOV 15 1880

PREMIUM BONDS.

CITY OF NEW ORLEANS.

A PLAN

TO

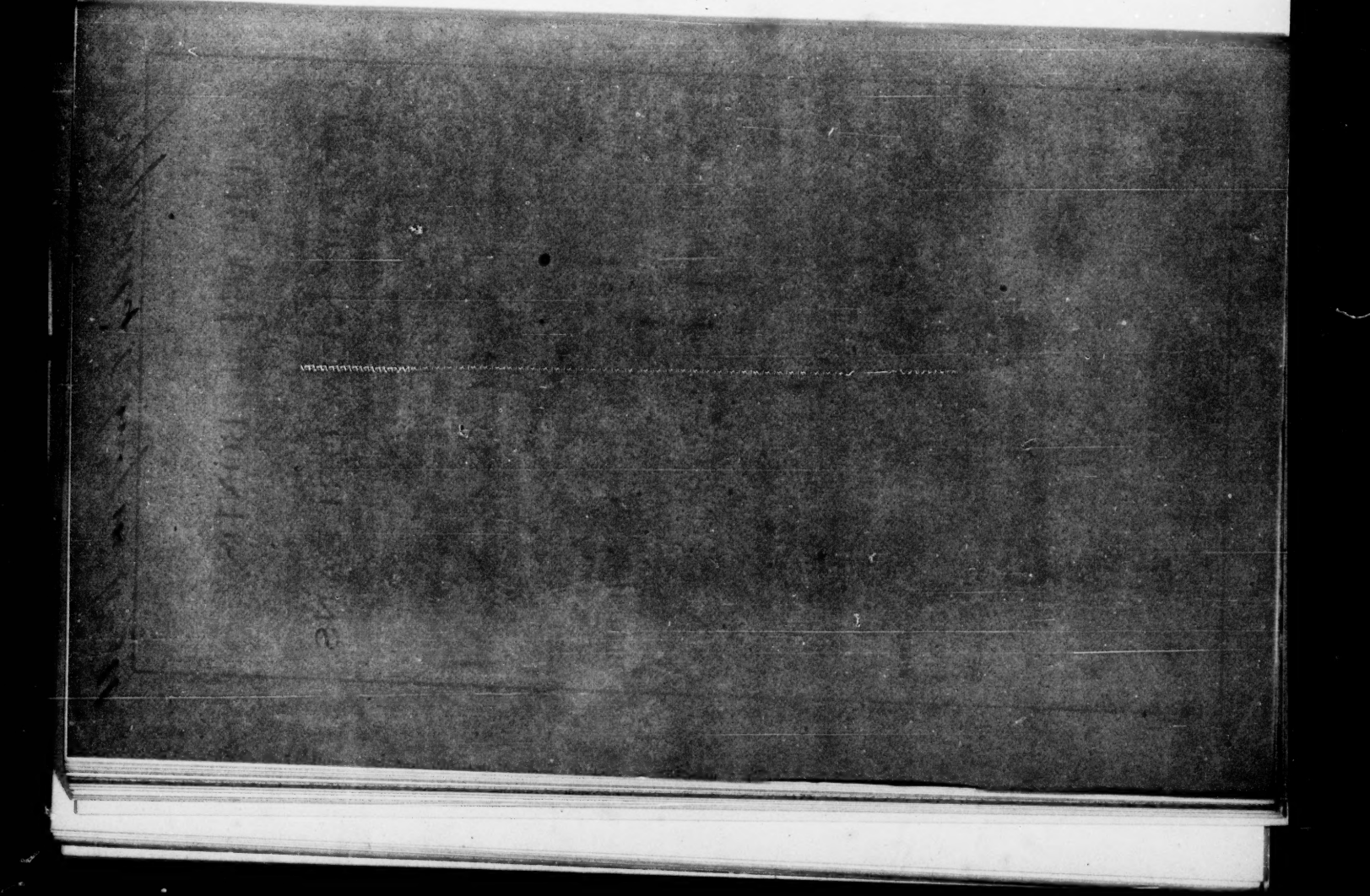
LIQUIDATE PRINCIPAL AND INTEREST OF THE DEBT

IN FIFTY YEARS.

COMMISSIONERS CONSOLIDATED DEBT.

I. W. PATTON, - - - - - Mayor.
ALF. H. ISAACSON, - - Administrator of Finance.
JOHN GLYNN, Jr., - Administrator of Public Accounts.

NEW ORLEANS:
PRINTED AT THE NEW ORLEANS DEMOCRAT OFFICE, 62 CAMP STREET.
1880.



PREFACE.

The financial embarrassments of the city having reached such a crisis as to demand an immediate adjustment of the public debt, the City Council has adopted a form of settlement which, while doing full and ample justice to the creditor, affords a great measure of relief to the already overstrained and unfortunate taxpayer.

The debt in bonds as it existed on the thirtieth of June, 1875, amounted to about twenty-two millions of dollars, requiring the levy of an annual tax for interest of $1,400,000, or 1⅛ per cent on the value of all real and personal estate of the city, estimated, as per assessment, at about $118,000,000, but which is no doubt far beyond its actual value.

This percentage added to that required for city expenses, schools and police augments the rate to at least 3 per cent, without any provision for judgments or other matured obligations, which would require 2 to 3 per cent more.

Under the pressure of excessive taxation real estate has lost its value, the obligations of the city have fallen to ruinously low prices, trade is stagnant, every branch of industry is suspended, the whole community more or less impoverished, and many of its members suffering for want of employment. Various plans have been suggested looking to a settlement of this important question.

With some *repudiation* of a portion of the debt is a favorite means of exit; others advocate a scaling of the debt and a reduction in interest for a period of years.

In regard to the first proposition, the ideas of those who favor repudiation do not seem to be very clear, nor the mode by which that process is to be reached made manifest.

It can be safely assumed that the rate of taxation as fixed for the present year, say one and a half per cent on an assessed value at least thirty-three and one-third per cent too high, is as much as can be collected from our exhausted taxpayers, in fact, it is doubtful if

even that rate is not too much to justify the expectation of realizing over three-fourths of the tax.

At that rate, however, but $300,000 can be applied to carrying the debt. If, therefore, it should be scaled at fifty cents, or down to $11,000,000, the city could only pay 2½ per cent interest the first year, and should the debt remain as it is she could pay something less than 1½ per cent.

The City Council, in its efforts to find a solution of this question, has been compelled to abandon the ordinary forms of finance, as unequal to the occasion, and to seek new and perhaps novel means of meeting the exigency.

The Premium Bond plan has therefore been presented as the only mode by which full justice can be afforded both to the debtor and creditor; by it the city can, with light taxation, redeem her obligations in full with interest, and give such relief as will enhance the value of both real estate and bonds.

Although the plan is but imperfectly understood here, it is a well recognized system of finance in the cities and municipalities of Continental Europe, where the bonds, in many instances, command a value of one, two and three fold above par.

A series and premium drawing have already taken place, and have proven highly satisfactory. Some idea of what can be accomplished under this plan may be formed from its operations the first six months.

With ⅛ per cent, the half-yearly tax, amounting to $150,000, the city can pay all drawn premiums and interest and liquidate near $400,000 of its bonded debt by purchase, and within the year she can liquidate nearly three-fourths of a million of dollars without being one dollar in arrears for interest.

The Constitutional Amendment authorizing the exchange of bonds, together with the ordinances of the City Council referring thereto and the plan of redemption are herewith appended.

ED. PILSBURY,
Administrator of Finance.

MOVEMENT OF THE PREMIUM BOND PLAN.

The whole debt of the city is converted into bonds of the denomination of twenty dollars, payable to bearer, and bearing interest at the rate of five per cent per annum from the fifteenth of July, 1875.

Each of these bonds increase in value to the extent of fifty cents (or 2½ per cent) semi-annually, until the fiftieth year, when they represent, in principal and interest, seventy dollars each.

One million of bonds, of twenty dollars each, are divided into ten thousand series of one hundred bonds each. Series number one embraces bonds number 1 to 100; series number two, bonds 101 to 200, and so on.

The 10,000 series, numbered from 1 to 10,000, are placed in a wheel, and in April and October of each year as many series are drawn as have to be redeemed according to the schedule.

The bonds composing the series thus drawn are entered for payment three months thereafter, principal and interest, and are receivable for all taxes, licenses and other obligations of the city.

At the expiration of the three months, say in January and July, the *bond* numbers of the drawn series are placed in a wheel, and 1176 prizes, amounting to $50,000, are distributed.

The first series drawing took place in October last, and the distribution of premiums on the fifteenth of January, with the following result:

Amount of redemption, as per plan.	$100,000	and premiums	$50,000
Of which there has been distributed to the holders of bonds	24,000	and	12,110
	$76,000		$37,890

These two amounts, say $113,890, represent the portion appertaining to bonds not yet funded, and which is now applicable to the purchase of bonds under sealed proposals, and at present market value should sink about $380,000 of bonds, which added to the $24,000

redeemed in full, would effect a reduction on the bonded debt of over $400,000 for the half-yearly operation of the plan.

Objections are raised to this scheme that it will not answer as investments for moneyed institutions, minors or other persons, who rely upon regular interest payments at stated intervals. These objections might have some little force were the city in a condition to pay regular interest, but it will be here demonstrated that this plan will yield more semi-annual interest than can be obtained in any other way.

An institution or association of individuals controlling 10,000 bonds, of $20 each, involving an investment at present rates of $60,000, can obtain *one* bond out of each of the 10,000 series, and consequently would have to draw as many bonds as there are series to be allotted during the year. The result of such a combination, which is entirely feasible, would be as follows:

For the next four years—

FIRST YEAR.

100 bonds redeemed at $20	$2000 00
Interest at 5 per cent	75 00
Average value of premiums	1000 00
Or an interest of 1 53-75 per cent on face of bonds	$3075 00

Or 5 125-1000 per cent on capital invested.

SECOND YEAR.

150 bonds redeemed at $20	$3000 00
Interest at 5 per cent	262 50
Average value of premiums	1000 00
Or an interest of 2 13-100 per cent on face of bonds	$4262 50

Or 7 10-100 per cent on capital invested.

THIRD YEAR.

180 bonds redeemed at $20	$3600 00
Interest at 5 per cent	495 00
Average value of premiums	1000 00
Or an interest of 2 54-100 per cent on face of bonds	$5095 00

And on capital of 8 49-100 per cent.

FOURTH YEAR.

210 bonds redeemed at $20	$4200 00
Interest at 5 per cent	787 50
Average value of premiums	1000 00
Or an interest on face of bonds of 2 99-100 per cent	$5987 50

And on the capital invested 9 98-100.

Now, it will be shown how this institution or association of individuals will stand after the receipt of these semi-annual payments.

FIRST YEAR.

Amount of bonds	$200,000	
Redeemed	2,000	
Remaining	$198,000	
With 5 per cent accrued interest	9,900	
		$207,900

SECOND YEAR.

Amount of bonds	$198,000	
Redeemed	3,000	
	$195,000	
With 10 per cent accrued interest	19,500	
		214,500

THIRD YEAR.

Amount of bonds	$195,000	
Redeemed	3,600	
	$191,400	
With 15 per cent accrued interest	28,710	
		220,110

FOURTH YEAR.

Amount of bonds	$191,400	
Redeemed	4,200	
	$187,200	
With 20 per cent accrued interest	37,440	
		224,640

No. 22.

JOINT RESOLUTION

Submitting an amendment to the Constitution of the State to limit the debt of New Orleans, and the issue of warrants by the officers; and prescribing certain penalties.

SECTION 1. Be it resolved by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, two-

thirds of the members elected to each house agreeing thereto, That at the general election for members of the General Assembly, which will take place in November, 1874, an amendment to the constitution of the State shall be submitted to the qualified electors of the State for their ratification or rejection, in the words following:

Article —. The city of New Orleans shall not hereafter increase her debt in any manner or form or under any pretext. After the first day of January, 1875, no evidence of indebtedness or warrants for payment of money shall be issued by any officer of said city, except against cash actually in the treasury; but this *shall not be so construed as to prevent a renewal of matured bonds at par, or the issue of new bonds in exchange for other bonds; provided*, the city debt be not thereby increased, nor to prevent the issue of drainage warrants to the transferee of contract under Act No. 30 of 1871, payable only from drainage taxes, and not otherwise. Any person violating the provisions of this article shall, on conviction, be punished by imprisonment for not less than two nor more than ten years, and by fine of not less than three thousand dollars nor more than ten thousand dollars.

SEC. 2. Be it further resolved, etc., That at said next general election the wishes of the electors in the premises shall be expressed by printed or written ballots, as follows:

"For the amendment limiting the debt of New Orleans;" or "Against the amendment limiting the debt of New Orleans," and the said ballots shall be counted and returns made and the result declared as in the case of election of State officers.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved February 24, 1874.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE, Secretary of State.

Adopted at the State election November 2, 1874, and promulgated by the Returning Board December 29, 1874.

MAYORALTY OF NEW ORLEANS,
City Hall, May 26, 1875.

[No. 3130—Administration Series.]

Resolved, That the Council cordially approve and adopt the plan submitted by the Administrator of Finance, entitled the "premium bonded fund of the city of New Orleans," and the commissioners of the consolidated debt are hereby charged with the duty (by and

with the advice and consent of the Council) to adopt the measures necessary to carry the same into execution.

Adopted by the Council of the city of New Orleans May 25, 1875.

Yeas—Bertoli, Brown, Bouny, Burke, Landry, McCarthy, Pilsbury.

CHARLES J. LEEDS, Mayor.

A true copy:

J. H. HARDY, Secretary.

MAYORALTY OF NEW ORLEANS,
City Hall, June 2, 1875.

[No. 3140—Administration Series.]

An ordinance to fund the bonded debt of the city of New Orleans, and to provide for the redemption of the principal and interest thereof.

Be it ordained, That the commissioners of the consolidated debbe and are hereby authorized to invite, by publication, the presentation of bonds to be funded in twenty-dollar premium bonds, in accordance with the plan submitted by the Administrator of Finance and adopted by the Council at its regular meeting of the twenty-fifth of May last, and approved by the Mayor.

Be it further ordained, That in order to participate in the first redemption, all bonds must be presented on or before the first day of September next, from which time further exchanges will cease until the first allotment shall have been made. The holders of bonds thus funded will receive in cash at that date a pro rata of all interest funds to the credit of the respective series, and all coupons due and to become due shall be thereupon surrendered with the bond itself.

Be it further ordained, That the commissioners of the consolidated debt be and are hereby authorized to contract for proposals or otherwise for the printing and engraving of the premium bonds.

Adopted by the Council of the city of New Orleans June 1, 1875.

CHARLES J. LEEDS, Mayor.

A true copy:

J. H. HARDY, Secretary.

MAYORALTY OF NEW ORLEANS,
City Hall, August 31, 1875.

[No. 3233—Administration Series.]

An ordinance providing for the exchange of bonds for premium bonds, and to regulate and carry out the funding plan adopted by the Council.

Be it ordained, That the Administrator of Finance be and is hereby directed to exchange all recognized bonds of the city of New Orleans, also of the late cities of Carrollton and Jefferson, for premium bonds, in accordance with the plan adopted by the Council and approved by the Mayor on the twenty-fifth day of May, 1875. The said premium bonds shall be dated on the first of September,

1875, and bear interest at the rate of five per cent per annum from the fifteenth day of July, 1875; they shall be signed by the commissioners of the consolidated debt and be countersigned when issued by such parties as the Council may hereafter select for that purpose.

Be it further ordained, That on all bonds funded or hereafter to be funded under this ordinance the interest adjustment shall date from the first day of July, 1875, after which period the interest thereon shall cease.

Be it further ordained, That a permanent committee of six shall be appointed to represent the bondholders in all matters touching their interests under and in this ordinance. They and their successors shall at all times have free access to the records of the consolidated debt, and may exercise such control and supervision over the allotments, cancellation and registry of bonds as they may deem necessary. They shall fill all vacancies among themselves, and may, in their discretion, appoint a suitable person to act for them in all matters relating thereto.

The committee shall at present be composed of John G. Gaines, president of the Citizens' Bank; Thomas A. Adams, president of the Crescent Mutual Insurance Company; Aug. Bohn, president of the Mechanics and Traders' Bank; George Jonas, president of the Canal Bank; J. H. Oglesby, president of the Louisiana National Bank; Samuel H. Kennedy, president of the State National Bank.

Be it further ordained, That the bonds funded under this ordinance, except those which shall have been redeemed, shall not be canceled or destroyed before the month of April, 1876. They shall be registered by number, marked, labeled and deposited in a safe manner until the period named.

Be it further ordained, That the first allotment of series shall take place on the fifteenth day of September, or as soon thereafter as possible, and the first allotment of premiums on the fifteenth day of January, 1876, fixed. All subsequent allotments of series shall take place on the fifteenth of April and fifteenth of October; and of premiums on the fifteenth of January and fifteenth of July.

Be it further ordained, That until all the bonds herein provided for are funded, it shall be the duty of the Administrator of Finance, immediately after the allotment of series, to invite by sealed proposals the exchange of old bonds for the drawn premium bonds remaining. Such proposals shall state the lowest price at which the old bonds are offered, payable in the drawn premium bonds, at face value and interest. The right to reject any and all bids to be reserved by the Council.

Be it further ordained, That all drawn series or numbers of premium bonds shall be received by the city for all dues, licenses, taxes or debts of any description at their face value and interests.

Be it further ordained, That all ordinances or parts of ordinances in conflict herewith be and are hereby repealed.

Adopted by the Council of the city of New Orleans August 31, 1875.

Yeas—Bertoli, Brown, Bouny, Burke, Landry, McCarthy, Pilsbury.

CHARLES J. LEEDS, Mayor.

A true copy:

J. H. HARDY, Secretary.

MAYORALTY OF NEW ORLEANS,
City Hall, October 6, 1875.

[No. 3266—Administration Series.]

Be it ordained, That J. Villarubia, Ulger Lauve and N. B. Phelps be and are hereby authorized to countersign premium bonds.

Adopted by the Council of the city of New Orleans October 5, 1875.

CHARLES J. LEEDS, Mayor.

A true copy:
J. H. HARDY, Secretary.

MAYORALTY OF NEW ORLEANS,
City Hall, January 19, 1876.

[No. 3364—Administration Series.]

Be it ordained, That in all cases where proposals for the exchange of bonds have been received and rejected, bids shall again be invited, either before or after the distribution of premiums, for exchange of bonds or for cash, as the case may be, and all such subsequent offers may include the undrawn premium bonds on the same footing as any other bond.

Be it further ordained, That the commissioners of the consolidated debt be and are hereby instructed to advertise for sealed proposals for the sale to the city of $350,000 of old and premium bonds.

Adopted by the Council of the city of New Orleans, January 18, 1876.

CHARLES J. LEEDS, Mayor.

A true copy:
J. H. HARDY, Secretary.

MAYORALTY OF NEW ORLEANS,
City Hall, April 19, 1876.

[No. 3471—Administration Series.]

Be it ordained, That hereafter the allotments of series of premium bonds shall take place quarterly, to-wit: On the thirty-first of January, fifteenth of April, thirty-first of July and fifteenth of October of each year; *provided*, however, that in all cases where these respective dates shall fall upon a *dies non* they shall be postponed until the next legal day thereafter.

Adopted by the Council of the city of New Orleans April 18, 1876.

CHARLES J. LEEDS, Mayor.

A true copy:
J. H. HARDY, Secretary

PROPOSALS FOR BONDS.

DEPARTMENT OF FINANCE,
New Orleans, January 22, 1876.

Sealed proposals will be received by the commissioners of the con-

solidated debt until twelve o'clock m., Wednesday, February 23, 1876, for the sale to the city of $350,000 of bonds of the city of New Orleans, including premium issues and of the late cities of Jefferson and Carrollton.

Bids must state the amount of accrued interest thereon, and all offers must cover both principal and interest.

The right to reject all bids is reserved.

ED. PILSBURY, Administrator.

RESOLUTIONS UNANIMOUSLY ADOPTED BY THE PROPERTY HOLDERS' UNION AT A SPECIAL MEETING HELD ON THE SECOND OCTOBER, 1875, WITH A FULL ATTENDANCE.

Whereas, the Premium Bond plan, proposed by Administrator Pilsbury, so far as it promises to effect a reduction of taxation, is to be warmly approved;

Resolved, That the Central Committee of the Property Holders' Union do not deem it incumbent on them to advocate or oppose either plan of managing the city debt as an ultimatum.

Resolved, That the present city administration is warmly commended in so far as it has reduced the expenses of the city government and its efforts to relieve the people in some measure of the intolerable burdens resting on them.

Resolved, That we will warmly support the Mayor and Administrators in all efforts to reduce taxation.

PROCEEDINGS OF MEETING OF OCTOBER 19, 1875.

A committee of three was appointed to present to the city Administrators the resolutions of Mr. Forman approving the Premium Bond plan as previously passed, viz: Messrs. Hughes, Hill and Higby.

THE FINANCIAL CONDITION OF THE CITY.

Address of Creditors to the Public.

Messrs. Editors:

GENTLEMEN: Our city is making a great effort to free itself from the difficulties that embarrass its government. We deem it our duty to give it our encouragement and approval. We would deprecate the idea of thrusting our views upon others of different convictions, or to provoke angry discussions, but the gravity of the financial condition of our city, and the relations we occupy to those having most at stake, not only justify us, but imperatively demand that we should contribute something to the efforts now being made to obtain relief from existing grievous burdens.

It is well known that a suit has been instituted by a class of bondholders who claim to be privileged creditors of the city. We are willing that their rights be tested before the courts and shall in good faith submit to their decision, but we desire that this part of the city debt may rest on its own merits, trusting to future events to arrive at satisfactory results and obliterate differences.

Our city Administrators have, after due deliberation, adopted a plan styled the "Premium Bond plan," by which the city can pay every cent of her debt, truly and surely and within a reasonable time.

This plan is no invention of theirs or of ours; it is well known in Europe, adopted by many large municipalities. It differs solely in the feature that they pay interest every three or six months, whereas with us, the interest is capitalized outside of the drawn series. This difference is owing to their bonds being given out for cash, and ours are exchanged for bonds, the interest of which the city finds itself unable to pay.

We have neither time nor space, nor is it our special province to argue here the merits of this plan. Suffice it to say that there has been presented to the Administrator of Finance the sum of upwards of four millions of dollars to be converted into Premium Bonds, which afford practical proof of the confidence in the arrangements and the soundness of the scheme by the parties whose names are hereto affixed. Whatever may be the issue of the suit to establish the status of the consolidated bonds, we believe and assert that the bondholders can, by uniformity of action, remove all dangers of bankruptcy and its accompanying train of evils. To repudiate would

be to fix upon our community a blot of commercial dishonor that endless years of prosperity and fair dealing could not obliterate. No possible injury could result to the city bondholders within the length of time necessary to make a practical test of the plan proposed. A spirit of fair dealing alone would seem to justify that concession. The plan should not be condemned in advance. We ask the public to wait and see; it cannot be expected that every soul in this city can be convinced and understand such matters at a glance. The solution of questions of political economy and finances, under such difficult circumstances, requires special aptitude.

We further claim that any taxpayer, however small his tax, is directly interested in this Premium Bond plan, and it is the only possible way in which taxation can be reduced to its minimum, giving protection at the same time to the bondholders.

Trusting, Messrs. Editors, that you will kindly give this communication a place in your columns, we subscribe ourselves,

Yours very respectfully,

Signed:

JNO. G. GAINES,
SAM'L. H. KENNEDY,
THOMAS A. ADAMS,
J. H. OGLESBY,
AUG. BOHN,
GEO. JONAS,

Committee.

[Here follows list of names of those who have funded.]

CRESCENT MUT. INS. CO.
H. V. OGDEN,
EWEN STEVENS,
JOS. HERNANDEZ,
LOUIS SCHWARTZ,
E. VORSTER,
TOWNSEND & LYMAN,
JOHN ECKERT,
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JOHN MANGOLD,
L. LEVY,
N. DAUNOY,
ALCUS, SCHERCK & AUTEY,
FACTORS & TRADERS' INS. CO.,
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C. DELASSUS, Agent,
HERM. ROEHL,
GERMANIA NATIONAL BANK,
GEO. W. HYNSON, Agent,
VALENTINE HEERMANN,
SAMUEL M. TODD,
JOHN KLEIN & CO.,
TIM DOHERTY,
C. H. DISQUE,
W. W. WASHBURN,
C. A. WINTER,
W. VAN BENTHUYSEN,
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GEO. H. FROST,
JACQUES LANG,
H. M. ISAACSON,
F. F. CASE,
W. S. DERAN,
T. J. RODGERS,
ED. MURRAY,
P. O. FAZENDE,
JULES A. BLANC,
D. R. CARROLL,
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H. W. BENJAMIN,
ERICH BRAND,
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B. SALOY,
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CHAS. S. ABELL,
F. T. WALKER,
M. BENGERT,
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NEW ORLEANS MUT. INS. ASS.,
GEO. S. KAUSLER,
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BEHAN, THORN & CO.,
J. H. WEBB,
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W. P. CONVERSE & CO.
CHAS. SPITZ,
CRESCENT CITY R. R. CO.,
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WM. HENRY,
JOS. WEST,
ANDREW HERO, Jr.,
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JOHN NELSON,
J. L. ADAMS,
LA. EQUITABLE LIFE INS. CO.,
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CALEB PENNEL,
DELGADO & CO.,
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A. JARDET,
A. LEMORE,
E. B. HOGAN,
S. REICKERT,
CHAS. FITZ,
JAMES H. BURDICK,
WM. HEYER,
A. VIZARD,
EDWARD BOOTH,
H. NEWGASS,
U. BETTISON,
JAS. BRANDIN,
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J. LANGSHAW,
H. MEADER,
QUEYROUZE & BOIS,
THOS. GLEASON,
HELLWEGE & SCHAEFER,
EMILE BOUNEY,
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H. VAN DINE,
JOHN H. CASTELLANOS,
WM. BEDELL,
A. W. BRETTE,
EDWIN T. RILEY,
A. DURIER,
J. P. MOORE,
JACOB HASSINGER,
J. NEWMAN AND HY. MELNE,
DR. H. CURTIUS,
THOS. GLEASON,
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L. BODIN,
HENRY HAAG,
MOORE, JANNEY & HYAMS,
THOS. DUFFY,
NORWOOD & RICHARD,
EDWARD HANSEN,
PIERRE MICHEL, Sr.,
SAM. P. BLANC,
CITIZENS' SAVINGS BANK,
J. J. WECKERLING,
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GEO. SOULE,

M. McQUADE,
LAFAYETTE H. & L. CO.,
WM. WALSH,
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H. MOSSY,
AMEDEE COUTOURIE,
JOHN D. HAMILTON,
CHAS. WHITING,
M. J. FARRELL,
CHRISTIAN AX,
H. AAKERHAUS,
JNO. J. O'BRIEN,
JOHN McINTOSH,
J. H. KELLER,
GEO. REHKOPT,
N. O. CITY RAILROAD CO.,
WM. DRISCOLL,
W. J. McCUNE,
E. L. COHEN,
S. FRIEDLANDER,
A. R. MONTGOMERY,
JOS. ANDREWS, Jr.,
THOS. FINN,
CHAS. T. SONIAT,
A. SCHADELI,
A. DESPOSITO,
L. GRAND,
EST. W. R. BELL,
A. H. WHITE,
C. HURSTED,
JAS. GORAN,
LEOPOLD CHRIST,
HOPE INSURANCE CO.,
GEO. P. CRANE,
J. L. LYON,
ALEX. HILL,
EST. F. M. FISH,
LEON BERTOLI,
N. R. STRATTON,
WM. HAGEMAN,
HY. NORMAN,
J. A. STURTEVANT,
GIROD FUND,
RAOUL JUMONVILLE,
R. M. HARRISON,
W. H. THOMAS,
EMILE MAIER,
FRANK VATTER,
H. L. BURNS,
N. COLLAMORE,
JAS. J. REISS,
J. BRANDNER,
R. C. SHORTRIDGE,
J. D. MAHONEY,
C. PLEASANTS,
JAS. LINDSEY,
LOUIS BONNET,
F. RIESLAND,
G. ALFRED HERO,
R. BATMULE,
P. ST. AMAND,
GEO. RICE,
GERMAN SOCIETY,
H. & C. TYLER,
G. O'NEAL,
H. LOCHTE,
ISAAC LEVI,
T. W. KIDDER,
LEEDS & CO.,
D. E. COLTON,
JAS. DWYER,
E. W. BURBANK,
EUG. KING,
A. V. CHOPPIN,
E. A. PALPREY, Treasurer,
A. DESSOMES,
Z. BRUENN,
MILNEBURG FIRE CO. NO. 1,
AND OTHERS.

No. 31.

AN ACT

To adjust, regulate and provide for the bonded debt of the city of New Orleans; to authorize the exchange of bonds of the city of New Orleans for other bonds to be issued on the plan known as the Premium Bond plan; to adopt and give legislative sanction to the said plan, as set out in ordinances Nos. 3130 and 3233, Administration Series of the city of New Orleans, approved on May 25 and August 31, 1875; to provide a fund to meet the semi-annual payments of the said bonds, known as premium bonds; to create a commission in the interest of creditors, and to give said commission the direction, control and management of the semi-annual allotment under said Premium Bond plan; to limit by contract the contracting of debt by the city of New Orleans; to limit taxation for all purposes therein, and to give relief to arrear taxpayers; to provide for the exchange of said premium bonds for other bonds in a certain contingency.

Whereas, the total debt, bonded and floating, of the city of New Orleans, has accumulated to an amount exceeding twenty-three millions of dollars, resulting from the occurrence of the civil war, and from reckless expenditures of public moneys;

Whereas, under the depressing influence of the consequences of the late war, and the disasters produced by the overflows in this State, and other causes, the taxable property of the city of New Orleans has become so reduced in value as to require taxation at the rate of at least five per cent per annum to liquidate the debt as established by the acts authorizing the various issues of the same; and

Whereas, the levying of a tax at so exorbitant a rate renders the collection impossible;

Whereas, the continuation of the levying of a tax beyond the ability of the property to pay leads to a further destruction of the assessable property of the city, and the consequent shrinkage of the common pledge of the creditors, tending to a continuation of the present embarrassment of the city affairs, and ultimate practical bankruptcy;

Whereas, the City Council of the city of New Orleans have adopted a plan for the liquidation of the city indebtedness, looking to the

payment of the creditors in full, obtaining thereby the indulgence necessary for the public well-being and the maintenance of the public honor; therefore

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, Tha the Mayor and Administrators of the city of New Orleans, or such other officers, aldermen or administrators as may hereafter be ordained or established, be, and they are hereby authorized and directed to exchange all recognized and valid bonds of the city of New Orleans and the late cities of Jefferson and Carrollton for bonds known as the premium bonds of the city of New Orleans, in accordance with the plan adopted by the City Council and approved by the Mayor, on the twenty-fifth of May and thirty-first of August, 1875. The said premium bonds shall be dated the first of September, 1875, and bear interest at the rate of five per cent per annum, from the fifteenth of July, 1875; they shall be signed by the Mayor, the Administrator of Finance and the Administrator of Public Accounts, as commissioners of the consolidated debt, and countersigned, when issued, by such parties as the Council have designated heretofore, or may hereafter designate, with the authorization of the supervising committee hereafter named.

SEC. 2. Be it further enacted, etc., That all outstanding bonds bearing interest shall have the interest computed up to the first day of July, 1875, and thereafter the bonds, when exchanged, shall bear interest as provided in the ordinance above ratified, which provides for the premium bonds.

SEC. 3. Be it further enacted, etc., That the allotment of series and premiums which have been made by virtue of ordinance No. 3233, Administration Series, adopted August 31, 1875, by the City Council, are hereby ratified and approved, and that further allotments shall take place on the fifteenth day of April and fifteenth day of October of each year, and of premiums on the fifteenth day of January and the fifteenth day of July of each year, or on such other date as the Council may prescribe; provided that payments be not made later than the fifteenth day of March and the fifteenth day of September of each year.

SEC. 4. Be it further enacted, etc., That a permanent committee of six citizens is hereby created to represent and supervise all mat-

ters and interest under the operation of this act; they and their successors shall at all times have free access to the records of the consolidated debt, and may exercise control and supervision over the allotments and premiums, the registry and cancellation of bonds as they may deem necessary, when not in conflict with the provisions of this act; they shall fill all vacancies in their number by death, resignation or otherwise; the said committee shall at present be composed at follows: John G. Gaines, Thomas A. Adams, August Bohn J. H. Oglesby, Samuel H. Kennedy and George Jonas.

Sec. 5. Be it further enacted, etc., That until all the bonds are funded as herein provided, it shall be the duty of the commissioners of consolidated debt and the said supervising committee, immediately after the allotment of series, to invite by sealed proposals for the exchange of old bonds for drawn premium bonds remaining in the possession of the city; such proposals shall state the lowest price at which the old bonds are offered, payable in the drawn premium bonds valued upon their face, capital and interest; the said bids, if any, to be opened by the commissioners of the consolidated debt and at least one of the said supervising committee, the right to reject any or all bids being reserved to the City Council; provided, that when bids are rejected, further offers shall be invited, either before or after distribution of premiums for exchange of all other bonds, or for cash as the case may be.

Sec. 6. Be it further enacted, etc., That it shall be the duty of the City Council, in the month of December of each year, or in the annual budget annually adopted for the ensuing year, to include an amount sufficient to meet and pay the principal and interest of the premium bonds, together with premium included, in the several allotments of series and premiums fixed for such year by the aforesaid ordinances and this act. It shall be the duty of the Council annually to levy an equal and uniform tax on all the assessed property within the corporate limits of the city, at a rate sufficient to provide the amount included in the budget as aforesaid, and said tax so levied shall constitute a special fund to be used for no other purpose than the payment of said bonds and interest on the said premiums comprised in said allotment, and the fund so raised shall be placed to the credit of an account to be called the premium bond account, and no money from said fund shall be paid out except on

the joint authority of the commissioners of the consolidated debt. The said tax to be raised shall be denominated the premium bond tax, and shall be separately mentioned in the tax rolls and receipts; provided, that the taxable power of the corporation of the city of New Orleans for all purposes including general administration, school, police, lighting, salary of officers, court expenses and every other purpose of government, including the sum to be raised to pay the premium bonds, as above stated, shall never, until the full, complete and final payment of the said premium bonds, exceed the rate of one and one-half per centum on the dollar of all the assessed value of property subject to taxation within the limits of the said city of New Orleans. The above limitation on the taxable power of the corporation is hereby declared to be a contract, not only with the holder of the said premium bonds, but also with all residents and taxpayers of the said city, so as to authorize any holder of said premium bonds, resident or taxpayer to legally object to any rate of taxation in excess of the rate herein limited. It being also a part of the consideration of this contract that the city of New Orleans shall be incompetent to incur any debt or obligation, as now provided by the constitution of this State, until the final payment and extinction of the premium bonds aforesaid.

Sec. 7. Be it further enacted, etc., That no tax for the payment of bonds or interest on bonds other than that authorized by the preceding sections, shall be levied either for the year 1876, or any year or years thereafter by the city of New Orleans, and that all existing laws requiring or authorizing the City Council to levy any tax whatsoever for bonds or interest on bonds, other than said premium bonds, be and the same are hereby repealed; and it shall be hereafter incompetent for any court to mandamus the officers of said city to levy and collect any interest tax other than that provided in this act or in case of such mandamus, by a receiver or otherwise, to direct the levy and collection of any such tax.

Sec. 8. Be it further enacted, etc., That all bonds issued in exchange for others, all allotments made, and all things done by the City Council or the Mayor and Administrators, previous to the passage of this act, under and by virtue of said Premium Bond plan and the ordinances Nos. 3130 and 3233, be and are hereby approved and ratified, and are continued in force, and are recognized as having

been lawfully done pursuant to powers vested in the Council by the constitution and laws.

SEC. 9. Be it further enacted, etc., That it shall be the duty of the City Council to at once prepare a statement in detail of the outstanding bonds of the city of New Orleans, to be funded as aforesaid, and whenever any of said bonds are funded for premium bonds, or offered to the city for drawn premium bonds, or drawn premiums, the said bonded debt so exchanged shall be immediately canceled by the commissioners of the consolidated debt, and said supervising committee or a member thereof shall prepare a statement of the bonds so canceled, to be made public.

SEC. 10. Be it further enacted, etc., That no city property of any kind shall hereafter be sold or conveyed in any manner except the proceeds be applied to the reduction of the bonded or floating debt.

SEC. 11. Be it further enacted, etc., That in addition to the obligation of the said city to provide annually the sum required for the execution of the Premium Bond plan, at least a tax of one-half of one per cent annually, to be used in the execution of the provisions of this act; and if [the] product of said half of one per cent be more than adequate for the payment of the drawn premium bonds, and the premiums as above provided, then the surplus to be used in retiring the outstanding bonds; provided, said half of one per cent taxation be considered as part of the one and a half per cent taxation to which the taxing power of the city is limited by this act; the intention of this section being to limit the city taxation to one and one-half per cent annually until the entire extinction of the bonded debt; to authorize the Council to levy annually out of the one and one-half per cent taxation a sum adequate to the annual execution of said Premium Bond plan, and after the year 1881 to levy at least one-half of one per cent for the carrying out of said plan, and to distribute the surplus realized therefrom, if any, in retiring the out, standing bonded debt.

SEC. 12. Be it further enacted, etc., That whenever under the operations of this act the bonded debt of the city of New Orleans shall be reduced below eight millions of dollars, the creditors holding the same shall be entitled to convert the same into bonds bearing six per cent interest per annum, payable in twenty years from their date, to be dated after the reduction aforesaid, the interest to be

paid semi-annually. A sinking fund of at least two hundred thousand dollars to be provided for along with the interest by adequate annual taxation; all the limitations hereinabove provided on taxation and debt to be applicable after the issue of said bonds until payment thereof.

SEC. 13. Be it further enacted, etc., That all costs, interest and charges due on arreared city taxes, up to the year 1875, inclusive, be and the same are hereby remitted; that it shall be the duty of the city government, immediately after the passage of this act, to prepare a list of the valid outstanding floating debt of the city; that after the preparation of the list of the floating debt provided in this act any of said debt shall be receivable in payment of said taxes, as follows: For all taxes due previous to the year 1865, inclusive, the said outstanding floating debt shall be received by the said city at the rate of one hundred dollars of floating debt for two hundred dollars of taxes; for all taxes due from 1866 to 1873, inclusive, the said outstanding debt shall be received at par; provided said taxes shall be paid within the year 1876.

SEC. 14. Be it further enacted, etc., That all drawn premium bonds shall be receivable by the city for all dues, licenses, taxes and debts of any description at their face value and interest.

SEC. 15. Be it further enacted, etc., That this act in all its provisions and limitations, be held a contract between the city of New Orleans, the holders of said premium bonds and the taxpayers or residents of said city, so as to authorize any of the contracting parties to resist any and all contracting of debt by the said city, or increase of taxation above the rate limited in the previous provisions of this act.

SEC. 16. Be it further enacted, etc., That this act take effect from and after its passage; that all laws or parts of laws inconsistent herewith be and the same are hereby repealed, and that all ordinances of the city of New Orleans conflicting with this act be and are hereby repealed.

(Signed) E. D. ESTILETTE,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved March 6, 1876.

(Signed) WM. P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE,
Secretary of State.

20

SERIES 100.
BOND No. 9901.

SERIES 100.
BOND No. 9901.

20

PREMIUM BOND.

Pl. 1 D.

THE CITY OF NEW ORLEANS

Will pay to the Bearer TWENTY DOLLARS, with FIVE per cent. Interest per annum from 15th July, 1875, in accordance with the plan of redemption on the reverse hereof.

This Bond is issued in exchange for other Bonds of the City of New Orleans, as authorized by the Constitutional Amendment of the State of Louisiana, promulgated December 29th, 1874, in accordance with the Ordinance of the City Council.

New Orleans, Sept. 1st, 1875.

Countersigned by

.....

CHAS. J. LEEDS, Mayor.
E. PILSBURY, Admr. of Finance.
J. G. BROWN, Admr. of Public Accounts.
Commissioners of Consolidated Debt.